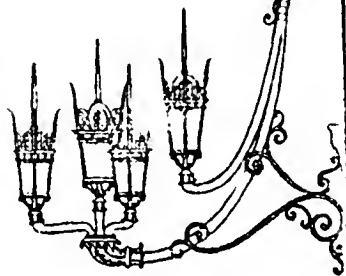


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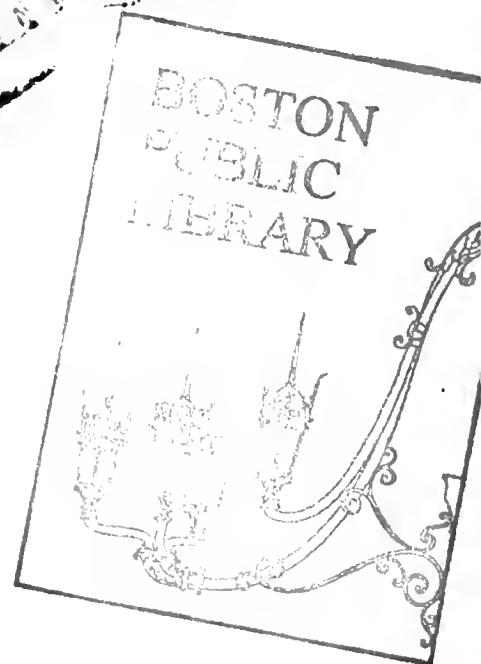


Composite copy showing amendments
made by First Amendment to Lease
and Second Amendment to Lease, both
dated as of September 26, 1975

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9/26/75
FANEUIL HALL MARKETPLACE, INC.



INDENTURE OF LEASE

DATED AS OF THE

21st DAY OF FEBRUARY, 1975

between

BOSTON REDEVELOPMENT AUTHORITY

and

FANEUIL HALL MARKETPLACE, INC.

Note: Brackets indicate material deleted by amendment.
Underscoring indicates material added by amendment.

Waterfront
B65 R
1975

TABLE OF CONTENTS

		<u>Page</u>
Article I	Lease of Premises	3
Section 1.01	Demise of Property	3
Article II	Definitions	5
Section 2.01	Property	5
Section 2.02	Plan	5
Section 2.03	Sublease	5
Section 2.04	Subtenant	6
Section 2.05	Existing Tenants	6
Section 2.06	Commission	6
Section 2.07	Rehabilitation	6
Section 2.08	Project Area	6
Section 2.09	City	6
Section 2.10	City Lease	6
Section 2.11	Commencement Date	6
Section 2.12	Rent	7
Section 2.13	Fiscal Year	7
Section 2.14	Tax Payments	7
Section 2.15	Impositions	7
Section 2.16	Improvements	7
Section 2.17	Institutional Lender	7
Section 2.18	Leasehold Mortgage	7
Section 2.19	Leasehold Mortgagee	8
Section 2.20	Preliminary Design Drawings	8

		<u>Page</u>
Section 2.21	Construction Cost	8
Section 2.22	Contractor	9
Section 2.23	Certificate of Final Completion	9
Section 2.24	Certificate of Partial Completion	9
Section 2.25	Final Working Drawings and Specifications	9
Section 2.26	Architect	10
Section 2.27	Taking	10
Section 2.28	Transfer	10
Section 2.29	Owner	10
Section 2.30	Event of Default	10
Section 2.31	Redevelopment Agreement	10
Section 2.32	Construction Contract	11
Section 2.33	Phase	11
Section 2.34	Quincy Market Phase	11
Section 2.35	Commencement Notice	11
Article III	Title and Condition of Property	12
Section 3.01	Title	12
Section 3.02	Condition of Property	12
Section 3.03	Other Contractors	13
Article IV	Use of Property; Quiet Enjoyment	15
Section 4.01	Use	15
Section 4.02	Covenants Running with the Land	16
Section 4.03	Beneficiaries	17

		<u>Page</u>
Section 4.04	The Plan	18
Section 4.05	Quiet Enjoyment	19
Section 4.06	Existing Tenants	19
Section 4.07	Chapter 188 of the Massachusetts Acts and Resolves of 1970	23
Section 4.08	The Commission	23
Article V	Term of Lease	29
Section 5.01	Term	29
Article VI	Rent	30
Section 6.01	Rent	30
Section 6.02	Net Lease	31
Section 6.03	No Termination	31
Section 6.04	Obligation Continuing in the Event of Bankruptcy	33
Article VII	Taxes, Assessments and Impositions	34
Section 7.01	Taxes	34
Section 7.02	Excluded Impositions	35
Section 7.03	Tax Receipts	36
Section 7.04	Permitted Contests	36
Section 7.05	Apportionment of Impositions	37
Section 7.06	Compliance with Laws	38
Section 7.07	Right to Contest Laws	39
Article VIII	Discharge of Liens	40
Section 8.01	Discharge of Liens	40
Section 8.02	Right to Contest Liens	40
Section 8.03	Protection of Lessor	41

		<u>Page</u>
Article IX	Mortgages; Rights and Duties of Mortgagees	42
Section 9.01	Prohibited Encumbrances	42
Section 9.02	Permitted Encumbrances	42
Section 9.03	Notices to Mortgagees	43
Section 9.04	Notice to Lessor	43
Section 9.05	Rights and Obligations of Leasehold Mortgagee	44
Article X	Rehabilitation	45
Section 10.01	Preliminary Design Drawings	45
Section 10.02	Final Working Drawings	45
Section 10.03	Works of Art	48
Section 10.04	Handicapped Persons	49
Section 10.05	Construction Safeguards	49
Section 10.06	Conditions to Commencement of Rehabilitation	49
Section 10.07	Commencement and Completion of Rehabilitation	51
Section 10.08	Cooperation Agreement	54
Section 10.09	Parking on Parcel E-8	54
Section 10.10	Parking on Parcel D-10	56
Section 10.11	Development of Other Parcels	58
Section 10.12	Certificate of Final Completion	58
Article XI	Maintenance, Ownership and Alteration of Improvements	61
Section 11.01	Maintenance	61
Section 11.02	Ownership	62

	<u>Page</u>
Section 11.03 Encroachments	63
Section 11.04 Alterations and Additions	64
Section 11.05 Compliance During Alterations	67
Article XII Condemnation	69
Section 12.01 Total Taking	69
Section 12.02 Partial Taking	69
Section 12.03 Application of Awards	71
Section 12.04 Notice of Taking	74
Section 12.05 Rights of Mortgagees	74
Section 12.06 Fair Market Value	76
Article XIII Insurance; Restoration and Reconstruction of Property	80
Section 13.01 Insurance	80
Section 13.02 Continuation of Insurance	83
Section 13.03 Blanket Policies	84
Section 13.04 Noncancellation	84
Section 13.05 Contest of Claims	84
Section 13.06 Adjustment of Losses	85
Section 13.07 Remedies	85
Section 13.08 Effect of Lessor Approval	86
Section 13.09 Certificate of Insurance	86
Section 13.10 Application of Proceeds	87
Section 13.11 Reconstruction	91
Section 13.12 Lessee's Rights in Event of Major Casualty	93

		<u>Page</u>
Article XIV	Transfer; Assignment; Subletting	97
Section 14.01	Definitions	97
Section 14.02	Purposes of Restrictions on Transfer	99
Section 14.03	Prohibited Transfers	100
Section 14.04	Permitted Transfers	100
Section 14.05	Notice of Transfer; Information as to Shareholders	103
Section 14.06	Effectuation of Certain Permitted Transfers	107
Section 14.05	Transfers of Lessor's Interest	108
Section 14.08	Subletting	110
Section 14.09	City Lease	111
Section 14.10	Nondisturbance	113
Section 14.11	Attornment	114
Article XV	Deposit; Default	115
Section 15.01	Deposit	115
Section 15.02	Events of Default	115
Section 15.03	Remedies in Event of Default	119
Section 15.04	Rights in Event of Termination	120
Section 15.05	Rights of Lessor in Event of Reentry	122
Section 15.06	No Termination	124
Section 15.07	Rights of Leasehold Mortgages	125
Section 15.08	Remedies Not Exclusive	130
Section 15.09	Waiver of Rights of Redemption	130

	<u>Page</u>
Section 15.10 Defaults of Lessor	131
Section 15.11 Force Majeure	132
Article XVI Notices and Demands	134
Section 16.01 Notices	134
Section 16.02 Additional Notices	134
Article XVII Indemnification	135
Section 17.01 Indemnification	135
Article XVIII Miscellaneous	136
Section 18.01 Durgin Park Parcel	136
Section 18.02 Partial Termination	136
Section 18.03 No Personal Liability	139
Section 18.04 Nondiscrimination	139
Section 18.05 Estoppel Certificates	145
Section 18.06 Headings	147
Section 18.07 Consents	147
Section 18.08 Recording	147
Section 18.09 Merger	147
Section 18.10 Surrender	148
Section 18.11 Covenants Separate and Independent	148
Section 18.12 Effect of Covenants	149
Section 18.13 No Partnership	150
Section 18.14 Modification	150
Section 18.15 Governing Law	150

SCHEDULES

Schedule A	Survey of Property and Surrounding Area
Schedule B	Description of Property
Schedule C	Existing Tenant of Quincy Market Building
Schedule D	Listings of Preliminary Design Drawings
Schedule E	Contractor's Letter of Intent
Schedule F	Lessor's "Equal Opportunity Compliance Policy"
Schedule G	Form of Party Wall Agreement
Schedule H	Plan Showing Phases and Quincy Market Phase
Schedule I	Legal Descriptions of Phases and Quincy Market Phase
Schedule J	Legal Description of Parcel D-10
Schedule K	Plan Showing Parcel D-10
Schedule L	Form of Party Wall Declaration and Agreement with respect to Durgin Park Parcel
Schedule M	Form of Rehabilitation Agreement with respect to Durgin Park Parcel

Note: Revised versions of Schedules A, B, H, I, J and K were substituted for the original versions thereof by Paragraphs 1 and 2 of the Second Amendment to Lease. Only the revised versions of these Schedules are attached hereto.

INDENTURE OF LEASE

INDENTURE OF LEASE made and entered into as of the 21st day of February, 1975 by and between the BOSTON REDEVELOPMENT AUTHORITY, a public body politic and corporate organized under the laws of the Commonwealth of Massachusetts (hereinafter together with any successors or assigns permitted or authorized by this Lease called "Lessor"), and FANEUIL HALL MARKETPLACE, INC., a corporation organized and existing under the laws of the State of Maryland and duly qualified to conduct business as a foreign corporation in the Commonwealth of Massachusetts (hereinafter together with any successors or assigns permitted or authorized by this Lease called "Lessee").

W I T N E S S E T H:

WHEREAS, with the assistance of the federal, state and city governments, Lessor is carrying out the Waterfront Urban Renewal Project pursuant to the Downtown Waterfront - Faneuil Hall Urban Renewal Plan and the Government Center Renewal Plan (both of which plans are hereinafter defined and hereinafter called the "Plan"); and

WHEREAS, the Plan permits the renovation and restoration of North Market Building, South Market Building and Quincy

Market Building (which buildings together with certain discontinued streets are shown on Schedule A attached hereto and hereby made a part hereof); and

WHEREAS, pursuant to the Plan, Lessor has acquired the North Market Building (with the exception of the Durgin Park Parcel shown on Schedule A) and South Market Building by exercise of the power of eminent domain; and

WHEREAS, Lessor has leased Quincy Market Building and portions of certain discontinued streets from the City (as hereinafter defined) pursuant to the City Lease (as hereinafter defined); and

WHEREAS, Lessor and Lessee desire to enter into this Indenture of Lease.

NOW, THEREFORE, in consideration of the mutual promises herein contained and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

ARTICLE I

Lease of Premises

Section 1.01. Demise of Property. Lessor, for and in consideration of the rents, covenants and agreements hereinafter reserved, mentioned and contained on the part of Lessee to be paid, kept, observed and performed, has leased, rented, let and demised, and by these presents does lease, rent, let and demise unto Lessee and Lessee does hereby take and hire, upon and subject to the conditions and limitations hereinafter expressed, that certain "Property" (as defined in Section 2.01 hereof), to have and to hold the Property, subject as aforesaid, and subject to the terms, covenants, agreements and provisions hereof, unto Lessee for the uses and purposes described in Article IV hereof for the "Term" (as defined in Section 5.01 hereof).

Note: Certain additional property was demised to Lessee pursuant to Paragraph 1 of the Second Amendment to Lease, which reads in part as follows:

"The Lessor, for and in consideration of the sum of One Dollar (\$1.00) to it in hand paid, receipt of which is hereby acknowledged, and for and in consideration of the rents, covenants and agreements reserved, mentioned and contained in the Lease on the part of Lessee to be paid, kept, observed and performed, has leased, rented, let and demised, and by these presents does lease, rent, let and demise unto Lessee and Lessee does hereby take and hire, upon and subject to the conditions and limitations expressed in the Lease, that certain property described as Parcel 2 in Schedule

"B" attached hereto and shown on Schedule "A" attached hereto, to have and to hold the same, subject as aforesaid and subject to the terms, covenants, agreements and provisions of the Lease, unto Lessee for the uses and purposes described in Article IV of the Lease for the Term.

ARTICLE II

Definitions

Section 2.01. Property. The term "Property" shall mean the parcels of land together with the North Market Building, South Market Building and Quincy Market Building, shown on Schedule "A" and described in Schedule "B" attached hereto and hereby made a part hereof, and all improvements, fixtures, appurtenances and easements, and alterations, replacements, additions and substitutions therefor, now or hereafter located thereon, or so much thereof as shall remain subject to this Lease from time to time.

Section 2.02. Plan. The term "Plan" shall mean the "Downtown Waterfront - Faneuil Hall Urban Renewal Plan" dated April 15, 1964, and recorded at the Suffolk Registry of Deeds in Book 7948, Page 527, as amended by amendments thereto dated April 8, 1965 and December 13, 1973, respectively, and the Government Center Urban Renewal Plan dated April 3, 1963, approved by the City Council on May 25, 1964, and recorded at the Suffolk Registry of Deeds in Book 8250, Page 187, and as they may be amended from time to time.

Section 2.03. Sublease. The term "Sublease" shall mean a sublease between Lessee and a "Subtenant" (as defined in Section 2.04 hereof) of any individual parts, floors or areas of the Property which Lessee is permitted to sublet hereunder.

Section 2.04. Subtenant. The term "Subtenant" shall mean any person, firm, corporation or other legal entity occupying any part of the Property under a Sublease.

Section 2.05. Existing Tenants. The term "Existing Tenants" shall have the meaning set forth in Section 4.06 hereof.

Section 2.06. Commission. The term "Commission" shall have the meaning set forth in Section 4.08 hereof.

Section 2.07. Rehabilitation. The term "Rehabilitation" shall mean the restoration and renovation of the Property pursuant to Article X hereof.

Section 2.08. Project Area. The term "Project Area" shall mean the urban renewal project area covered by the Downtown Waterfront - Faneuil Hall Urban Renewal Plan.

Section 2.09. City. The term "City" shall mean the City of Boston, Massachusetts.

Section 2.10. City Lease. The term "City Lease" shall mean that certain Indenture of Lease dated as of the date hereof between the City and Lessor demising to Lessor Quincy Market Building and portions of certain discontinued streets more particularly described therein.

Section 2.11. Commencement Date. The term "Commencement Date" shall mean [September 1, 1975.] September , 1976*

*Second Amendment to Lease, Paragraph 4. However, the Notice of Lease recorded in the Suffolk County Registry of Deeds states that the term commenced on October 27, 1975.

Section 2.12. Rent. The term "Rent" shall have the meaning set forth in Section 6.01 hereof.

Section 2.13. Fiscal Year. The term "Fiscal Year" shall mean any consecutive twelve month period commencing upon the first day of June and ending upon the last day of May during the "Term" (as defined in Section 5.01 hereof).

Section 2.14. Tax Payments. The term "Tax Payments" shall mean those amounts to be paid by Lessee to the City pursuant to the provisions of any agreement with respect to taxes between Lessee and the City.

Section 2.15 Impositions. The term "Impositions" shall have the meaning set forth in Section 7.01 hereof.

Section 2.16. Improvements. The term "Improvements" shall mean all improvements constructed, restored or renovated by Lessee pursuant to Article X hereof, including those which are part of the Property as of the date hereof.

Section 2.17. Institutional Lender. The term "Institutional Lender" shall mean a commercial bank, trust company, mutual savings bank, savings and loan association, life insurance company, pension trust fund, mortgage or real estate investment trust having a minimum paid in-capital of one million dollars (\$1,000,000) or other financial institution commonly known as an "Institutional Lender".

Section 2.18. Leasehold Mortgage. The term "Leasehold Mortgage" shall mean any one or more mortgages, deeds of

trust, deeds to secure debt, loan deeds, trust indentures, security agreements or any similar security or title retention device which shall, from time to time, create a lien upon the leasehold estate created by this Lease and which shall be security for one or more notes, bonds or other evidences of indebtedness issued by Lessee to any Institutional Lender or held by an Institutional Lender.

Section 2.19. Leasehold Mortgagee. The term "Leasehold Mortgagee" shall mean the Institutional Lender, or its designee, in whose favor a Leasehold Mortgage shall have been created (or if such Leasehold Mortgage is a deed of trust or trust indenture, the trustee named therein), together with any successor or assignee of such Institutional Lender, designee or trustee.

Section 2.20. Preliminary Design Drawings. The term "Preliminary Design Drawings" shall have the meaning set forth in Section 10.01 hereof.

Section 2.21. Construction Cost. The term "Construction Cost" shall mean the total of all direct costs and expenses incurred by Lessee in the actual construction, restoration or rehabilitation of physical improvements as part of the Rehabilitation including, without limitation, the cost of labor, equipment, materials and supplies for construction, fees and expenses paid to contractors and the cost of permits and licenses, but not including any indirect costs

such as Lessee's overhead, general expenses or fees of architects, engineers, attorneys, accountants and consultants.

Section 2.22. Contractor. The term "Contractor" shall have the meaning set forth in Section 10.06 hereof.

Section 2.23. Certificate of Final Completion. The term "Certificate of Final Completion" shall mean a certificate certified to by the Lessor which shall set forth the date on which substantial completion of the Rehabilitation occurred as to the Quincy Market Phase or any Phase.

Section 2.24. Certificate of Partial Completion. The term "Certificate of Partial Completion" shall mean a certificate certified to by the Lessor which shall set forth the date on which substantial completion of a portion of the Rehabilitation occurred as to the Quincy Market Phase or any Phase.

Section 2.25. Final Working Drawings and Specifications. The term "Final Working Drawings and Specifications" shall mean complete:

- (a) architectural drawings, including site development, landscaping and utilities drawings;
- (b) structural drawings;
- (c) electrical and mechanical drawings; and
- (d) final specifications in accordance with the Uniform System for Construction Specifications, Data Filing and Cost Accounting, AIA Document K103,

but not including drawings and specifications relating to Subtenant improvements.

Section 2.26. Architect. The term "Architect" shall mean Benjamin A. Thompson and Associates, Inc., 1 Story Street, Cambridge, Massachusetts or such other architect as may be designated by Lessee and approved by Lessor.

Section 2.27. Taking. The term "Taking" shall mean a taking (or the sale to a public authority after legal notice of a taking) of all or part of the Property or any interest therein or any right accruing thereto, as the result of or in lieu of condemnation or exercise of the power of eminent domain. A taking shall be effective for the purposes of this Lease as of the date on which possession is required to be surrendered.

Section 2.28. Transfer. The term "Transfer" shall have the meaning set forth in Section 14.01 hereof.

Section 2.29. Owner. The term "Owner" shall have the meaning set forth in Section 14.01 hereof.

Section 2.30. Event of Default. The term "Event of Default" shall have the meaning set forth in Section 15.02 hereof.

Section 2.31. Redevelopment Agreement. The term "Redevelopment Agreement" shall refer to that certain Redevelopment Agreement dated as of May 21, 1974 by and between Lessor and Lessee, as amended from time to time, which agreement is hereby incorporated herein by reference.

Section 2.32. Construction Contract. The term "Construction Contract" means that certain Construction Contract, dated September 26, 1972, by and between Lessor and Frank Falzarano d/b/a Falzarano Construction Company, as amended by a certain agreement, dated February 6, 1975, between said parties and The American Insurance Company.

Section 2.33. Phase. The term "Phase" or "any Phase" shall refer to the portion of the Property included within any of the delineated areas designated "Phase I", "Phase II", "Phase III", "Phase IV", "Phase V" or "Phase VI", as shown on Schedule H and described in Schedule I.

Section 2.34. Quincy Market Phase. The term "Quincy Market Phase" shall refer to the portion of the Property included within the delineated area designated "Quincy Market Phase", as shown on Schedule H and described in Schedule I.

Section 2.35. Commencement Notice. The term "Commencement Notice" shall have the meaning set forth in Section 10.06.

ARTICLE III

Title and Condition of Property

Section 3.01. Title. The Property is subject to:

- (a) the existing state of title thereof as of the date hereof;
- (b) any state of facts which an accurate survey or physical inspection thereof might show;
- (c) all zoning regulations, restrictions, rules and ordinances, building restrictions and other laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction; and
- (d) except as provided in Section 3.02, the physical condition of buildings, structures and other improvements and any fixtures, located on the Property as of the Commencement Date, without representation or warranty of any kind by Lessor.

Lessee represents to Lessor that it has examined (i) the title to the Property and (ii) all matters related to subsections (a), (b), (c) and (d) above prior to the execution and delivery of this Lease and has found the same to be satisfactory for all purposes hereof.

Section 3.02. Condition of Property. Lessor hereby expressly disclaims any warranties of any nature, expressed

or implied, as to the structural integrity of the Property, and any other warranties of any nature, expressed, implied or otherwise except as expressly set forth in the Lease. Lessee hereby accepts the Property "as is" including, but not limited to, those parts of the Property which relate to work performed and the work so performed prior to the date hereof by the Falzarano Construction Company pursuant to the Construction Contract, subject, however, to the Falzarano Construction Company completing the Construction Contract, it being understood and agreed that completion shall have occurred when the Lessor shall have expended not less than the sum of \$2,509,648.00.

Section 3.03. Other Contractors. Lessee acknowledges that Lessor has entered into the Construction Contract and that the City has entered into a contract with Thomas Construction Company to perform certain work relating to Quincy Market Building. Lessee accepts the Property subject to the rights and obligations of the parties to such contracts and agrees not to interfere with the performance of such contracts.

Notwithstanding any term or provision herein to the contrary, including without limitation Section 17.01, Lessee shall not be responsible for any liability, loss, damage, injury, cost, expense, cause of action, suit, claim, demand or judgment of any nature whatsoever arising out of or resulting from any act or omission committed or suffered by the

Falzarano Construction Company, the Thomas Construction Company, or any agent, officer, employee, contractor, assignee, or other party performing work or furnishing materials pursuant to the contracts between said contractors and the City or Lessor. During the performance of any work under such contracts, subject to the provisions thereof, and at the request of Lessee, Lessor shall require all persons furnishing labor or materials under such contracts to comply with the reasonable requirements and recommendations of Lessee's insurers relating to fire protection and job site conditions. If Lessor fails to effect such requirements and recommendations, Lessee may take such action, in the name, on the behalf and at the expense of Lessor as may be necessary to cause the Property to conform to such requirements and recommendations.

ARTICLE IV

Use of Property; Quiet Enjoyment

Section 4.01. Use. Lessee shall:

- (a) devote the Property to, and only to and in accordance with, the uses specified in the Plan and this Lease. The term "uses specified in the Plan" or similar language in this Lease shall refer to the use provisions of the Plan whether or not the term of the Plan has expired and shall include the land and all building, housing, and other requirements or restrictions of the Plan pertaining to such land;
- (b) not discriminate upon the basis of race, color, religion, sex or national origin in the sale, lease, or rental or in the use or occupancy of the Property or any Improvements erected or to be erected thereof, or any part thereof; and
- (c) give preference in the selection of Subtenants for commercial space built on the Property to the maximum extent practicable to business firms displaced from the Project Area because of clearance, redevelopment and rehabilitation activities, which firms desire to occupy space and are willing and financially able to pay rents or prices equal to rents or prices

charged business firms engaged in business of a similar type or quality for similar or comparable space built as part of the Rehabilitation. Lessor shall cooperate fully with Lessee in connection with Lessee's attempts to establish which prospective Subtenants are entitled to the benefits of this Subsection 4.01(c).

Section 4.02. Covenants Running with the Land.

The agreements and covenants provided in Section 4.01 hereof shall be covenants running with the land and shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Lease, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, Lessor, its successors and assigns, the City and any successor in interest to the Property, or any part thereof, and the United States of America (hereinafter called the "United States") in the case of the covenants provided in Subsection 4.01(b), against Lessee and every successor in interest to the leasehold estate in the Property, or any part thereof or any interest therein. The agreement and covenant provided in Subsection 4.01(a) hereof shall remain in effect throughout the Term, at which time such agreement and covenant shall terminate, and the agree-

ments and covenants provided in Subsection 4.01(b) hereof shall remain in effect without limitation as to time, provided, that such agreements and covenants shall be binding or Lessee, each successor in interest to the leasehold estate in the Property, and every part thereof, respectively, only for such period as such successor or party shall have an interest in the Property or any part thereof.

Section 4.03. Beneficiaries. In amplification, and not in restriction, of the provisions of Section 4.02 hereof, it is intended and agreed that Lessor and its successors and assigns shall be deemed beneficiaries of the agreements and covenants provided in Section 4.01 hereof, and the United States shall be deemed a beneficiary of the covenant provided in Subsection 4.01(b) hereof, both for and in their or its own right and also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of Lessor and the United States, for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether Lessor of the United States has at any time seen, remains, or is an owner of any land or interest thereof to, or in favor of, which such agreements and covenants relate. Lessor shall have the right, in the event of any breach of any such agree-

ment or covenant, and the United States shall have the right in the event of any breach of the covenants provided in Subsection 4.01(b) hereof, to exercise all the rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled.

Section 4.04. The Plan. Lessor, subject to the provisions of this Lease, shall perform and enforce all of the provisions of the Plan required to be performed or enforced by it. Lessor shall submit to Lessee for its approval (which approval shall not be unreasonably withheld or delayed) [all proposed changes to the Plan which would (in the reasonable judgment of Lessor) materially affect Lessee's operation or use of the Property or Lessee's rights and obligations under this Lease.]

(i) all proposed changes to the Plan which would affect:

(a) any use of the Property required or permitted by the Plan or this Lease, or

(b) the use of parcel E-8 or Parcel D-10 (both as shown on Schedule A) for parking purposes as required by Sections 10.09 and 10.10; and

(ii) all other proposed changes in the Plan which would (in the reasonable judgment

of Lessor) materially affect Lessee's
rights and obligations under this Lease.*

Section 4.05. Quiet Enjoyment. Lessor represents and warrants that it has the right, power and authority to enter into this Lease and that Lessee, upon paying the Tax Payments, Rent (as defined in Section 6.01 hereof) and additional rents reserved herein and observing and keeping the covenants, agreements and stipulations of this Lease on its part to be paid, observed and kept, shall lawfully, peaceably and quietly hold, occupy and enjoy the Property during the Term, without hindrance, ejection or molestation by Lessor or any person or persons claiming under Lessor. Lessee shall have the right to terminate this Lease or to seek a rent abatement for a material breach of this covenant.

Lessor and its agents may enter and examine the Property at all reasonable times in order to determine whether Lessee is in compliance with the provisions hereof, and the City may enter and examine that portion of the Property leased by the City to Lessor under the City Lease at all reasonable times in order to determine whether Lessor is in compliance with the provisions of the City Lease.

Section 4.06. Existing Tenants. Subject to the provisions of Subsection 4.01(c), Lessee shall have no obligations to any person, firm or corporation presently occupying any part of Quincy Market Building, whether under lease,

*First Amendment to Lease, Paragraph 1

license or otherwise, other than those persons, firms and corporations listed on Schedule C attached hereto and made part hereof (hereinafter referred to as the "Existing Tenants"), and Lessee's obligations with respect to the Existing Tenants shall be limited to the agreements of Lessee set forth in this Article IV. Lessee covenants and agrees that:

- (a) For the period of time during which the Rehabilitation of Quincy Market Building is being performed, Lessee shall offer a Sublease to each Existing Tenant of space within Quincy Market Building which Sublease will, except for conditions and acts which are not within the control of Lessee, permit the Existing Tenant to continue to operate its present retail business in Quincy Market Building. Such a Sublease shall provide for a per square foot rental equal to the Existing Tenant's present square foot rental set forth on Schedule C. In the case of Existing Tenants, which because of the Rehabilitation, must be moved to temporary locations, Lessee shall pay for the cost of moving such Existing Tenant's portable fixtures, equipment and inventory, and any such temporary move shall

be accomplished with the least interruption by Lessee practicable under the circumstances.

(b) Prior to the issuance of a Certificate of Final Completion or a Certificate of Partial Completion relating to Quincy Market Building, whichever occurs first, Lessee shall offer to enter into a Sublease, with each Existing Tenant with which a Sublease has been entered into pursuant to Subsection 4.06(a), or space within Quincy Market Building or elsewhere within the Property which is in a fully finished condition ready for occupancy and use (except for tenant fixtures and equipment such as display cases, refrigeration and water heaters) and generally consistent with the Existing Tenant's present retail operation. Any such Sublease shall provide for:

- (i) a term expiring on the later of a date no less than three years from its commencement or July 1, 1979; and
- (ii) a per square foot rental equal to no more than such Existing Tenant's present per square foot rental as shown on Schedule C.

(c) Ninety (90) days prior to the expiration of any Sublease entered into pursuant to clause (b) above, Lessee shall offer to renew the Sublease of any Existing Tenant then occupying such space and operating its business. Any such renewal shall be at a rental equal to the fair market value of such space for businesses and conditions as are consistent with the terms of Subleases to other Subtenants of the Quincy Market Building operating comparable types of businesses; and

(d) Disputes between Lessee and any Existing Tenant as to any of the matters contained in this Section 4.06 shall, at the election of either, be referred to the Commission for decision by it. Such decisions of the Commission shall be final and binding upon Lessee and any Existing Tenant unless, within thirty (30) days after any such decision, Lessee or such Existing Tenant elects to pursue the remedies available to it under law or equity in any court of competent jurisdiction.

Provided, however, that any Existing Tenant electing to accept any offer made by Lessee pursuant to clause (a), (b) or (c) above, shall agree with Lessee (i) at all times to conform the operation of its business to the general character, as it may be from time to time, of the retail market; (ii) to accept

space in the Quincy Market Building of such size and location as, in the good faith judgment of Lessee, shall be necessary in order to satisfy the merchandising, tenant mix, circulation and other standards of the overall plan for the subleasing and operation of the Quincy Market Building; (iii) to otherwise conduct its business in accordance with the standards of operation of the retail market to be conducted in the Quincy Market Building following Rehabilitation thereof; and (iv) not to make any direct or indirect transfer or assignment of its rights under such Subleases; provided, further, that any Existing Tenant which is offered a Sublease in accordance with Section 4.06 shall have ninety (90) days within which to accept such a Sublease by execution and delivery thereof. Failure of any Subtenant to so accept such a Sublease shall automatically terminate Lessee's offer to enter into a Sublease and the rights of such Existing Tenant hereunder.

Section 4.07. Chapter 188 of the Massachusetts Acts and Resolves of 1970. Lessor and Lessee acknowledge the existence of Chapter 188 of the Massachusetts Acts and Resolves of 1970 and agree to abide by the provisions thereof, and Lessor shall cause the City to comply with the provisions of Section 8.03 of the City Lease.

Section 4.08. The Commission. There is hereby created, effective upon the Commencement Date, a commission (the "Commission") known as the Faneuil Hall Marketplace Commission composed of the Mayor of the City and Director of the Lessor (or their respective

successors in office) and two persons appointed by the Mayor, from time to time, and one person appointed by Lessee, from time to time. The Commission shall meet at such times as it shall deem appropriate or at the request of Lessor, Lessee, or any Existing Tenant for the purpose of reviewing[:

- (a) the proposed uses of the Property and the mix of retail uses to be included in the Property after Rehabilitation;
- (b) design controls for the facade treatment of ground floor spaces;
- (c) Lessee's program for promotion of the Property and merchandising the portions thereof to be subleased to Subtenants;
- (d) the terms and conditions of any Sublease offered to the Existing Tenants pursuant to Section 4.06 of this Lease; and
- (e) any matters which are brought before it pursuant to its other functions as set forth in Section 4.06.]

any matters which are brought before it pursuant to Section 4.06, Section 11.04 or the last paragraph of this Section 4.08.

From time to time upon request of Lessee or any Leasehold Mortgagee, the Director of Lessor (or his successor in office) shall issue certificates describing action taken by the Commission, or the status of any matter required to be submitted to the

Commission, which certificates shall be conclusive evidence of the matters therein certified to any^d may be relied upon by Lessee or any Leasehold Mortgagee as the case may be.*

Lessor and Lessee acknowledge that the present and historic character of the use of the street floor of the Quincy Market Building is as a meat, cheese and produce market with related market uses. Lessee shall not use or permit the use of any portion of said floor for any purpose other than as a meat, cheese and produce market or for related market use of the same general character. The sale of food for on-premises consumption shall be permitted to the extent that such sale does not affect the general character of the street floor. No sale of food for on-premises consumption shall include table service without the prior written approval of the Commission. Lessee shall submit any proposed changes in the general character of the street floor of Quincy Market Building to the Commission for its review and approval or disapproval, and no such changes shall be made without the approval of the Commission.

Section 4.09. Mechanical Equipment Area. Lessee shall use the portion of the Property described a Parcel 2 in Schedule B (the "Mechanical Equipment Area") solely for the

*First Amendment to Lease, Paragraph 2

installation, construction, maintenance, replacement and repair
from time to time, of such mechanical and electrcial equipment as
it may deem necessary or desirable in order to provide
heating and air-conditioning to buildings, structures and other
improvements on the Property and such walls, fences or landscaping
as Lessee shall deem necessary or desirable in order to screen
such equipment from public view (said equipment and screening
being referred to herein as the "Mechanical Equipment Facilities");
provided that any such installation or construction shall be
accomplished in accordance with plans and specifications therefor
approved by Lessor pursuant to the provisions of Article X.
At any time after Lessor shall no longer be required to operate
(or cause to be operated) the Parking Facility on Parcel D-10
pursuant to Section 10.10, if Lessor shall determine, in good
faith, that the location of the Mechanical Equipment Facility
unreasonably interferes with the development or use of Parcel
D-10, Lessor may require Lessee to relocate the Mechanical Equipment
Facilities to another mutually agreeable location of said Parcel
D-10 or, if Lessor and Lessee cannot agree on such location
within thirty (30) days after written notice to Lessee of Lessor's
election to exercise its rights to require such relocation, to
such location in former South Market Street as Lessee

shall specify and Lessor shall approve (which approval shall not be unreasonably withheld). Promptly after the determination of the new location of the Mechanical Equipment Facilities (the "New Mechanical Equipment Area") pursuant to the next preceding sentences, Lessor and Lessee shall (and Lessee shall cause all Leasehold Mortgagees to) execute and deliver such instruments or documents as shall be necessary to evidence the termination of this Lease as to the Mechanical Equipment Area and the demise to Lessee under this Lease of the New Mechanical Equipment Area (unless the same shall be part of the Property) and, in addition thereto, Lessor shall deliver to Lessee (i) evidence, reasonably satisfactory to Lessee, that Lessor is the owner of an estate in fee simple in the New Mechanical Equipment Area, free and clear of all liens, encumbrances, restrictions, covenants or clouds on title, unless the New Mechanical Equipment Area is part of the Property in which case Lessor shall not be required to deliver such evidence to Lessee, and (ii) such easements, supplements to the City Lease or other agreements with the City or others as Lessee shall deem reasonably necessary to relocate the Easement Area. Within ninety (90) days after such instruments or documents shall have been executed and delivered and such evidence, easements, supplements or other documents

shall have been provided, Lessee shall remove the Mechanical Equipment Facilities from the Mechanical Equipment Area and shall install, construct, or reconstruct the same or substitute facilities in the New Mechanical Equipment Area at Lessee's sole cost and expense; provided that if, at the time Lessee is required to undertake and complete such relocation, any Leasehold Mortgagee shall be the Lessee hereunder by reason of having acquired the leasehold estate created by this Lease by foreclosure of a Leasehold Mortgage or by deed in lieu of any such foreclosure, or by the execution of a new lease pursuant to Subsection C of Section 15.07, such relocation shall be at the expense of Lessor, who shall reimburse Lessee, after demand therefor and upon completion of such relocation, for all costs and expenses incurred by Lessee in connection with such relocation.

*Second Amendment to Lease, Paragraph 4

ARTICLE V

Term of Lease

Section 5.01. Term. The term of this Lease (hereinafter called the "Term") shall be the period commencing on the Commencement Date and ending at midnight on [the date which is ninety-eight (98) years and three hundred and sixty-four (364) days after the commencement date of the City Lease] February 20, 2074* or on that date resulting from an earlier termination as hereinafter set forth.

*Second Amendment to Lease, Paragraph 5.

ARTICLE VI

Rent

Section 6.01. Rent. Lessee covenants to pay to Lessor, at Lessor's address for notices set forth in Section 16.01 hereof or at such place or to such person as Lessor from time to time may designate in writing by notice to Lessee, in such coin or currency of the United States as shall at the time of payment be legal tender for the payment of all debts, public or private, as rent (hereinafter called the "Rent") for the Property, commencing on the Commencement Date and thereafter throughout the Term, an annual rental equal to ten dollars (\$10.00).

Rent shall be payable in advance on the Commencement Date and on the first day of each Fiscal Year thereafter and, in the event that the first and last days of the Term are not June 1 and May 31, respectively, Rent will not be prorated but will be payable in full for such partial Fiscal Year.

Lessee covenants to pay and discharge when the same shall become due, as additional rent, all other amounts, liabilities and obligations which Lessee by or pursuant to this Lease assumes or agrees to pay or discharge, together with every fine, penalty, interest and cost which may be added for nonpayment or late payment thereof and, in the event of any failure on the part of Lessee to pay or discharge any of the

foregoing, Lessor shall have all rights, powers and remedies as are provided herein or by law in the case of nonpayment of the Rent or additional rent[.] subject, however, to the provisions of Section 15.03, 15.04, 15.05 and 15.07.* Interest at the rate of four and one-half (4-1/2) percentage points per annum above the large business prime rate charged from time to time on short term loans to large businesses with the highest credit standing by The Chase Manhattan Bank of New York, N.A. on all late or overdue payments of Rent and additional rent relating to obligations which Lessor shall have paid on behalf of Lessee shall accrue and be due to Lessor with respect to each such late or overdue payment commencing on the date when payment thereof should have been received by Lessor and ending on the date when Lessor receives payment.

Section 6.02. Net Lease. This Lease is a net lease and Rent, additional rent and all other sums payable hereunder to or on behalf of Lessor, shall be paid without notice or demand, and without set-off, counterclaim, abatement, suspension, deferment, deduction or defense except as otherwise expressly provided in Sections 4.05 and 15.10.

Section 6.03. No Termination. Except as otherwise expressly herein provided, this Lease shall not terminate, nor shall Lessee have the right to terminate this Lease or be entitled to the abatement of any rent hereunder or any reduction

*First Amendment to Lease, Paragraph 3.

or allocation thereof, nor shall the obligations of Lessee under this Lease be otherwise affected, by reason of any damage to or the destruction of all or any part of the Property from whatever cause, or a Taking of the Property or any portion thereof by condemnation, requisition or otherwise for any reason whatever, or the prohibition, limitation or restriction of Lessee's use of all or any part of the Property, or the interference with such use by any person, or by reason of any eviction by paramount title or otherwise (subject, however, to the provisions of Section 4.05 hereof), or by reason of the foreclosure of any Leasehold Mortgage or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of parties hereto that the obligations of Lessee hereunder shall be separate and independent covenants and agreements, that the Rent, additional rent and all other sums payable by Lessee hereunder shall continue to be payable in all events, and that the obligations of Lessee hereunder shall continue unaffected, unless the requirement to pay or perform the same shall have been terminated pursuant to an express provision of this Lease; provided, however, that, during the continuance of any such damage, destruction, Taking, prohibition, limitation, restriction, interference, eviction or foreclosure, Lessee shall not be obligated to perform any obligations which as a result thereof are no longer capable of being performed.

Section 6.04. Obligation Continuing in the Event of Bankruptcy. Lessee covenants and agrees that it will remain obligated under this Lease in accordance with its terms, and that Lessee will not take any action to terminate, rescind or avoid this Lease, by virtue of the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding-up or other proceeding affecting Lessor or any assignee of Lessor, or by virtue of any action with respect to this Lease which may be taken by any trustee or receiver of Lessor or any assignee of Lessor in any such proceeding, or by any court in any such proceeding; provided, however, that nothing in this Section 6.04 shall be construed as a waiver of any rights or remedies otherwise available to Lessee under this Lease.

ARTICLE VII

Taxes, Assessments and Impositions

Section 7.01. Taxes. As additional rent under this Lease and in addition to [the Tax Payments and]* and Rent hereinabove provided for, Lessee shall pay or cause to be paid (i) all charges for water, gas, light, heat, telephone, electricity, power and other utility and communication services at any time rendered or used on or about the Property, and (ii) except as provided in Section 7.02 and before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof, the Tax Payments or if there shall be an agreement with respect to taxes between Lessee and the City* all real estate taxes, all assessments, water rates, sewer rents and charges, all sales and use taxes which may be levied or assessed against or payable by Lessee on account of the acquisition, leasing or use of the Property or any portion thereof, and all other governmental charges of every character, general and special, ordinary and extraordinary, and whether or not the same shall have been in the express contemplation of the parties hereto (all of which taxes, assessment, water rates, sewer rents and charges and other governmental charges are, subject to the exclusions therefrom expressed in Section 7.02, hereinafter called "Impositions"), which are assessed, levied, confirmed, imposed or become a lien upon the Property; provided, however that if by

*First Amendment to Lease, Paragraph 4.

law, any such Imposition may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Lessee may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments, and shall pay such installments as may become due during the term of this Lease as the same respectively become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

Section 7.02. Excluded Impositions. The term "Impositions" does not include, and nothing contained in this Lease shall require Lessee to pay, any franchise, corporate, estate, inheritance, succession, capital levy or transfer tax, or any income, excess profits or revenue tax of Lessor, or any other tax, assessment, charge or levy upon the Rent payable by the Lessee under this Lease, unless any such tax, assessment, charge or levy is imposed or levied upon or assessed against Lessor in substitution for or in place of any other tax, assessment, charge or levy referred to in Section 7.01. Any tax, assessment, charge or levy imposed, levied or assessed against Lessor in substitution for or in place of any other tax, assessment, charge or levy referred to in Section 7.01 shall be deemed to be an "Imposition" and shall be payable by Lessee if specifically determinable, and only to the extent that such substitute Imposition would be payable if the Property were the only property of Lessor subject to such Imposition.

Section 7.03. Tax Receipts. Lessee shall, upon request of Lessor, furnish to Lessor for inspection by it, official receipts of the appropriate taxing authority or other evidence satisfactory to Lessor evidencing the payment of any Imposition.

Section 7.04. Permitted Contests. Lessee shall not be required to pay, discharge, or remove any Imposition (including penalties and interest), upon or against the Property, or any part thereof, so long as Lessee shall in good faith contest the same or the validity thereof by appropriate legal proceedings, and shall give to Lessor prompt notice in writing of such contest at least ten (10) days before any delinquency occurs, provided that said legal proceedings shall operate to prevent the collection of the Imposition so contested, or the sale of the Property, or any part thereof, to satisfy the same, and provided, further, that Lessee shall, prior to the date such Imposition is due and payable, have given such reasonable security as may be required by Lessor from time to time in order to insure the payment of such Imposition to prevent any sale, foreclosure or forfeiture of the Property or any part thereof, by reason of such nonpayment. Such security shall not exceed a sum equal to one and one-quarter times the amount of such Imposition and all penalties, fines and interest which can be assessed thereon. In the event of any such contest and the final determination thereof

adversely to Lessee, Lessee shall, before any fine, interest, penalty or cost may be added thereto for nonpayment thereof, pay fully and discharge the amounts involved in or affected by such contest, together with any penalties, fines, interest, costs and expenses that may have accrued thereon or that may result from any such contest by Lessee and, after such payment and discharge by Lessee, Lessor will promptly return to Lessee such security as Lessor shall have received in connection with such contest. Any such proceedings to contest the validity or amount of Imposition or to recover back any Imposition paid by Lessee may be brought by Lessee at Lessee's expense, in the name of Lessor or in the name of Lessee or both, as Lessee may deem advisable and Lessor shall cooperate with Lessee in any such proceeding; provided, however, that if any such proceeding shall be brought by Lessee, Lessee shall indemnify and save harmless Lessor against any and all loss, cost or expense of any kind (including, but not limited to, reasonable attorneys' fees and expenses) which may be imposed upon or incurred by Lessor in connection therewith.

Section 7.05. Apportionment of Impositions. Any Imposition relating to a fiscal period of the taxing authority, a part of which is within the Term and a part of which is prior or subsequent to the Term, shall whether or not such Imposition shall be assessed, levied, imposed, or become a lien upon the Property or shall become payable during the Term, be apportioned

and adjusted between Lessor and Lessee as of the Commencement Date or last day of the Term, as the case may be, so that Lessor shall pay that proportion of such Imposition which that part of such fiscal period included in the period of time prior to the Commencement Date or subsequent to the end of the Term bears to such fiscal period, and Lessee shall pay the remainder thereof. With respect to any Imposition for public improvements or benefits which by law is payable, or at the option of the taxpayer may be paid, in installments, Lessor shall pay the installments thereof which become due and payable subsequent to the end of the Term, and Lessee shall pay all such installments which become due and payable at any time during the Term even though payment is postponed beyond the end of the Term by Lessee.

Section 7.06. Compliance with Laws. Lessee shall, at its sole cost and expense, comply with and shall cause the Property and all Subtenants thereof to comply with (i) all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances affecting the Property or any part thereof, or the use thereof, including those which require the making of any structure, unforeseen or extraordinary changes, whether or not any such statutes, laws, rules, orders, regulations or ordinances which may be hereafter enacted involve a change of policy on the part of the governmental body enacting the same, and (ii) all rules,

and (ii) all rules, orders and regulations of the National Board of Fire Underwriters or other bodies exercising similar functions in connection with the prevention of fire of the correction of hazardous conditions, which apply to the Property.

Lessee shall comply with each and every requirement of all policies of public liability, fire and other insurance which at any time may be in force with respect to the Property.

Nothing in this Section 7.06 or in Section 3.01(c) or elsewhere in this Lease shall be construed as a waiver or surrender by Lessee of any present or future right to maintain the Property or any portion thereof as a non-conforming use or of any similar right (whether by reason of a so-called "grandfather clause" or otherwise) arising in the event of any change in any statute, law, rule, order, regulation or ordinance.*

Section 7.07. Right to Contest Laws. Nothing herein shall limit the right of Lessee to contest the validity or enforceability of any statute, law, rule, order, regulation or ordinance with which Lessee or any Subtenant may be requested to comply under Section 7.06.

*First Amendment to Lease, Paragraph 5.

ARTICLE VIII

Discharge of Liens

Section 8.01. Discharge of Liens. Lessee shall not create or permit or suffer to be created or to remain, and will discharge, any lien (including, but not limited to, the liens of mechanics, laborers, materialmen, suppliers or vendors for work or materials alleged to be done or furnished in connection with the Property), encumbrance or other charge upon the Property or any part thereof or upon Lessee's leasehold interest therein; provided, however, that Lessee shall not be required to discharge any such liens, encumbrances or charges as may be placed upon the Property by the act of Lessor.

Section 8.02. Right to Contest Liens. Lessee shall have the right to contest in good faith and by appropriate legal proceedings, the validity or amount of any mechanics', laborers', materialmen's, suppliers' or vendors' lien or claimed lien. In the event of such contest, Lessee shall give to Lessor reasonable security, as may be required by Lessor, to insure payment thereof and to prevent any sale, foreclosure or forfeiture of the Property or any part thereof by reason of such nonpayment. Such security shall not exceed a sum equal to one and one-quarter times the amount of such lien or such claim of lien. On final determination of such lien or such claim of lein, Lessee shall immediately pay any

judgment rendered, with all proper costs and charges, and shall have such lien released or judgment satisfied at Lessee's expense, and upon such payment and release or satisfaction, Lessor shall promptly return to Lessee such security as Lessor shall have received in connection with such contest.

Section 8.03. Protection of Lessor. Nothing in this Lease shall be construed as constituting the consent of Lessor, expressed or implied to the performance of any labor or the furnishing of any materials or any specific improvements, alteration of or repair to, the Property or any part thereof, by any contractor, subcontractor, laborer or materialmen, nor as giving Lessee any right, power or authority to act as agent of or to contract for, or permit the rendering of, any services, or the furnishing of any materials, in such manner as would give rise to the filing of mechanics' liens or other claims against the fee of the Property. Lessor shall have the right at all reasonable times to post, and keep posted, on the Property any notices which Lessor may deem necessary for the protection of Lessor and of the Property from mechanics' liens or other claims. In addition, but subject to Section 8.02 hereof, Lessee shall make, or cause to be made prompt payment of all moneys due and legally owing by Lessee to all persons doing any work or furnishing any materials or supplies to Lessee or any of its contractors or subcontractors in connection with the Property and any buildings, structures or improvements thereon.

ARTICLE IX

Mortgages; Rights and

Duties of Mortgagees

Section 9.01. Prohibited Encumbrances. Except as provided in Section 9.02, Lessee shall not:

- (a) Engage in any financing or other transaction creating any mortgage upon the Property or upon Lessee's leasehold estate therein;
- (b) place or suffer to be placed upon the Property, or Lessee's leasehold estate therein, any lien or other encumbrance (other than a lien upon the said leasehold estate for taxes levied but not delinquent or payable with penalty); or
- (c) suffer any levy or attachment to be made on the Property or on Lessee's leasehold estate therein, other than such levy or attachment as may result from a foreclosure of a Leasehold Mortgage.

Any such mortgage, encumbrance or lien shall be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

Section 9.02. Permitted Encumbrances. At any time and from time to time during the Term and without obtaining the approval of Lessor, Lessee may assign or encumber the

estate created by this Lease by way of one or more Leasehold Mortgages; provided, however, that notwithstanding any foreclosure thereof, Lessee shall remain liable for the payment of the Rent and additional rent reserved in this Lease and for the performance of all of the terms, covenants and conditions of this Lease which by the terms hereof are to be carried out and performed by Lessee.

Section 9.03. Notices to Mortgagees. Promptly after assigning or encumbering the Leasehold estate, pursuant to Section 9.02 of this Lease, Lessee shall furnish Lessor with a written notice setting forth the name and address of the Leasehold Mortgagee. From and after the receipt of such notice, Lessor shall furnish said Leasehold Mortgagee with any notice sent to Lessee pursuant to [Article XV of]* this Lease, and no such notice shall be deemed to have been properly given unless a copy thereof shall have been sent to such Leasehold Mortgagee; provided, however, Lessor shall not be obligated to furnish notices to any Leasehold Mortgagee the name and address of which have not been provided to Lessor by Lessee or such Leasehold Mortgagee pursuant to the provisions of this Section 9.03.

Section 9.04. Notice to Lessor. Lessee shall notify Lessor promptly of any other lien or encumbrance which has been created on or attached to the Property or to Lessee's leasehold estate therein whether by act of Lessee or otherwise.

*First Amendment to Lease, Paragraph 6.

Section 9.05. Rights and Obligations of Leasehold

Mortgagee. If a Leasehold Mortgagee shall acquire the leasehold estate in the Property by foreclosure of its Leasehold Mortgage or otherwise, then, in such event, this Lease shall continue in full force and effect so long as the Leasehold Mortgagee is not in default hereunder. For the period of time during which the Leasehold Mortgagee or any purchaser at foreclosure of a Leasehold Mortgage holds the leasehold estate, the Leasehold Mortgagee or such purchaser shall become liable and be fully bound by the provisions of this Lease; provided, however, that the Leasehold Mortgagee or such purchaser shall not be bound by or liable under the provisions of this Lease for the period of time prior or subsequent to the period of time during which it holds the leasehold estate.

ARTICLE X

Rehabilitation

Section 10.01. Preliminary Design Drawings. Lessor acknowledges that prior to the execution of this Lease, Lessee has submitted to Lessor and Lessor has approved the following plans (the "Preliminary Design Drawings") with respect to the proposed restoration and renovation of the Property:

- (i) A Site Plan showing the Property, traffic circulation, streets utilization, paving materials, lighting, landscaping, utilities and other basic improvements;
 - (ii) A Building Plan indicating general organization of space, floor plans, elevations, sections, materials, lighting and signing standards; and
 - (iii) Interior Standards indicating general treatment, materials, lighting and signing standards to be imposed to control Subtenant improvements;
- all of which are more specifically identified in Schedule D attached hereto and made a part hereof.

Section 10.02. Final Working Drawings. Not later than August 1, 1975, Lessee shall submit to Lessor Final Working Drawings and Specifications as to the Quincy Market Phase and not later than fifteen (15) days after the giving of a Commencement Notice (as defined in Section 10.06) with respect to any Phase, Lessee shall submit Final Working Drawings and

Specifications as to such Phase. All such Final Working Drawings and Specifications shall be prepared by the Architect in accordance with the previously approved Preliminary Design Drawings, the Plan and this Lease. Upon receipt thereof, Lessor shall review the Final Working Drawings and Specifications for conformity with the Preliminary Design Drawings, the Plan and this Lease, and within thirty (30) days thereof shall notify Lessee of its approval or disapproval in writing, setting forth in detail any grounds for disapproval. Lessor's rights of review of the Final Working Drawings and Specifications shall be limited to consideration of developments or refinements of the Preliminary Design Drawings, to review of new elements which were not presented in the Preliminary Design Drawings, and to their conformity with the standards relating to governmental consents, approvals or permits required for the performance of the Rehabilitation. If no notice of disapproval is delivered to Lessee within thirty (30) days after the submission of the Final Working Drawings and Specifications, or any resubmission thereof as hereinafter provided, they shall be deemed approved. In the event of a disapproval, Lessee shall, within thirty (30) days after the date Lessee received the written notice of such disapproval, resubmit the Final Working Drawings and Specifications to Lessor, altered to meet the grounds of disapproval. Any resubmission shall be subject to the review and approval of

Lessor, in accordance with the procedure hereinabove provided for an original submission, until the same shall be approved by Lessor, but: (i) if Lessee shall fail to submit Final Working Drawings and Specifications with respect to the Quincy Market Phase which are consistent developments or refinements of the Preliminary Design Drawings on or before the Commencement Date, Lessor shall have the right to terminate this Lease pursuant to Article XV and (ii) if Lessee shall fail to submit Final Working Drawings and Specifications with respect to any Phase which are consistent developments or refinements of the Preliminary Drawings on or before that date which is ninety (90) days after the date of the Commencement Notice delivered to Lessor with respect to such Phase, such Commencement Notice shall be deemed to be null and void nunc pro tunc.

From time to time during the developemnt of Final Working Drawings and Specifications, Lessee will consult with Lessor and make available to Lessor such information, studies and preliminary designs as Lessor may reasonably request.

The work depicted and described on the Final Working Drawings and Specifications approved by Lessor pursuant to this Section 10.02 is referred to herein as the "Rehabilitation". The Rehabilitation shall be diligently prosecuted and accomplished in a good and workmanlike manner and in accordance with the Final Working Drawings and Specifications approved by Lessor pursuant to this Section 10.02 and any subsequent modification thereof

approved by Lessor and the Rehabilitation shall not be commenced as to any Phase until the Final Working Drawings and Specifications therefor shall have been approved by Lessor pursuant to this Section 10.02.

Section 10.03. Works of Art. Lessee shall provide as part of the Rehabilitation works of art reasonably satisfactory to Lessor and shall expend for such works of art a sum at least equal to one percent (1%) of the Construction Cost. In this connection, Lessee shall include in the Final Working Drawings and Specifications submitted to Lessor a general program for employment of art to support and enhance the Rehabilitation. The term "works of art" as used herein shall be deemed to include ornaments, arrangements, or effects created through the use of sculpture, bas-reliefs, mosaics, frescos, murals, prints, tapestries, paintings, fountains which are sculptural in themselves or designed to enhance the setting of the sculpture, and other objects having aesthetic merit; provided, however, that in calculating the amount expended for works of art pursuant to this Section 10.03, Lessee shall be given a credit in an amount equal to the sums expended by Lessee (less any amount expended by Lessee for the construction of escalators or equipment designed to move people to or from such exhibit) for its share of an exhibit to be constructed for Boston 200 Corporation.

Section 10.04. Handicapped Persons. It is the general policy of Lessor that all new buildings constructed in urban renewal project areas shall be so designed to accommodate persons who are physically handicapped. In furtherance of this policy, Final Working Drawings and Specifications shall include provisions conforming insofar as practicable with the "American Standard Specifications for Making Buildings and Facilities Accessible to and Useable by the Physically Handicapped" as published by the National Society for Crippled Children and Adults, Inc., which Specifications are hereby incorporated herein by reference. Lessor shall take into consideration the provisions and objectives of such Specifications in its review of and action upon the Final Working Drawings and Specifications.

Section 10.05. Construction Safeguards. Lessee shall erect and properly maintain at all times, as required by the conditions and the progress of work performed by or at the request of Lessee, all necessary safeguards for the protection of workmen and the public.

Section 10.06. Conditions to Commencement of Rehabilitation. Lessee shall not commence the Rehabilitation as to the Quincy Market Phase or any Phase, unless and until it shall have delivered to Lessor notice of Lessee's intention to commence such Rehabilitation which notice shall specify the Phase (or the Quincy Market Phase) as to which Lessee intends to commence the Rehabilitation and the date on which Lessee

intends to commence the same, which date shall be not more than ninety (90) days after the date of such notice (said notice being hereinafter called the "Commencement Notice"); the Commencement Notice shall be accompanied by:

- (a) a copy of a building permit issued by the Building Department of the City covering the Rehabilitation which Lessee proposes to commence, together with evidence satisfactory to Lessor that all application fees in connection therewith have been paid;
- (b) a copy (certified by Lessee to be true and correct) of the Contract between Lessee and the general contractor (hereinafter called the "Contractor") engaged by Lessee for the Rehabilitation which Lessee proposes to commence, together with a Letter of Intent executed by the Contractor substantially in the form of Schedule E attached hereto and made a part hereof, in which the Contractor undertakes to carry out all of the provisions of Section 18.04 hereof relating to the work to be performed by the Contractor and those engaged by him and the requirements of the Lessor's "Equal Opportunity Compliance Policy", adopted February 20, 1969, a copy of which is attached hereto, marked

Schedule F and made a part hereof;

- (c) a copy (certified by Lessee to be true and correct) of a firm commitment, issued by an Institutional Lender, reasonably satisfactory to Lessor, whereby such Institutional Lender agrees to furnish construction financing of the Rehabilitation which Lessee proposes to commence, together with evidence satisfactory to Lessor that Lessee has equity capital which, when combined with the financing to be provided by such Institutional Lender, is adequate to complete the Rehabilitation which Lessee proposes to commence;

provided, however, that if Lessee shall deliver to Lessor a Commencement Notice with respect to any Phase in the North Market Building or any Phase in the South Market Building, Lessee shall not thereafter deliver to Lessor a Commencement Notice with respect to any Phase in the same building which is not contiguous to a Phase as to which a Commencement Notice shall have been delivered.

Section 10.07. Commencement and Completion of Rehabilitation. Lessee agrees for itself and every successor in interest to the leasehold estate in the Property, or any part thereof, that Lessee will take all steps necessary to enable it

to, and that it will, commence the Rehabilitation:

- (i) with respect to that portion of the Rehabilitation to be performed in the Quincy Market Phase, on or before the Commencement Date; and
- (ii) with respect to that portion of the Rehabilitation to be performed in each other Phase, on or before the Commencement Date specified in the Commencement Notice delivered to Lessor with respect to such Phase;

and that it will diligently prosecute and complete such Rehabilitation on or before that date which is eighteen (18) months after the date of the Commencement Notice issued with respect to such Rehabilitation; provided, however, that:

- (a) Lessee's obligation to complete the Rehabilitation with respect to any Phase within the time provided herein shall be subject to the completion of the Construction Contract pursuant to Section 3.02 not later than September 1, 1975; and
- (b) Lessee's obligations under this Section 10.07 are subject to:
 - (i) the provisions of Section 15.11;
 - (ii) the observance by Lessor of its obligations not to materially delay Lessee by reason of Lessor's act, failure to act or failure of

reasonable cooperation; and

- (iii) the timely performance by the Lessor of any and all obligations or commitments arising out of and more particularly described in Section 3.03 of the Redevelopment Agreement;

provided, that, in the event Lessee intends to avail itself of the provisions of clause (a) or subclause (ii) or (iii) hereof, Lessee shall give written notice to Lessor not more than fifteen (15) days from the date Lessee is delayed by reason of the failure of observance or performance by the Lessor or the City of any of the matters described in said clause (a) or subclause (ii) or (iii).

It is intended and agreed that such agreements and covenants shall be covenants running with the land and that they shall be, in any event, and without regard to technical classification or designation, legal or otherwise, and, except only as otherwise specifically provided in this Lease, to the fullest extent permitted by law and equity, binding for the benefit of the community and Lessor and enforceable by Lessor against Lessee and every successor in interest to or of the leasehold estate in the Property or any part thereof or any interest therein.

Until the Rehabilitation has been completed, Lessee shall make monthly reports, in such detail as may reasonably be requested by Lessor, describing the actual progress of Lessee

with respect to the Rehabilitation.

Lessor shall cooperate with and assist Lessee in every reasonable way in Lessee's efforts to obtain all governmental consents, approvals, permits, or variances which may be required for the performance of the Rehabilitation, or any stage thereof. Such cooperation shall include (without limitation) Lessor's joinder and Lessor's procurement of the City's joinder in any application for any such consent, approval, permit or variance where joinder therein by the owner of the Property is required by law.

Section 10.08. Cooperation Agreement. Lessor shall, during the Term of this Lease comply with the terms and provisions of the Cooperation Agreement relating to the Downtown-Waterfront-Faneuil Hall Urban Renewal Plan between it and the City, dated June 24, 1964 (which Agreement is hereby incorporated herein by reference) and shall enforce all of its rights thereunder.

Section 10.09. Parking on Parcel E-8. Lessor shall use its best efforts to cause construction of a Parking Garage on Parcel E-8 (as shown on Schedule A) by the City to be commenced not later than December 31, 1975 and to be prosecuted diligently without interruption or delay (except as shall result from matters beyond the reasonable control of the City) until completion thereof. Such Parking Garage shall be used as a structure containing facilities for the parking of not less than

four hundred (400) standard size automobiles and shall be available for use by the public and be governed by a rate structure designed to encourage frequent turnover rather than long term parking. Lessor shall use its best efforts to cause said Parking Garage to remain in operation for a period of twenty (20) years from the date of issuance of the Certificate of Final Completion of the Rehabilitation of the Quincy Market Phase and all Phases which Lessee is obligated to complete pursuant to this Lease. Until such time as construction of such Parking Garage shall have commenced in good faith, Lessor shall use its best efforts to cause the City to operate continuously and without interruption a surface parking facility on Parcel E-8 which shall be available for use by the public, and from and after the date upon which Lessee shall become entitled to a Certificate of Final Completion with respect to the Quincy Market Phase such surface parking facility shall be governed by a rate structure designed to encourage frequent turnover rather than long term parking.

Section 10.10. Parking on Parcel D-10. Not later than June 30, 1975, Lessor shall, at its expense, undertake and complete improvements to Parcel D-10 (as described in Schedule J and shown on Schedule K) as shall be necessary (including, without limitation, grading, paving, and striping) in order to permit operation thereon of a paved ground level parking facility (the "Parking Facility") having parking spaces for not less than [203] 201* standard size automobiles laid out as shown on Schedule K. Upon completion of the Parking Facility, Lessor shall, at no cost or expense to Lessee, cause the same to be operated continuously for a period terminating on the later to occur on (a) the date upon which the parking garage to be constructed on Parcel E-8 pursuant to Section 10.09 shall have been completed and shall have fully opened for business with the public, or (b) December 31, 1976. Lessor further agrees that, at no cost or expense to Lessee, the Parking facility shall at all times during such period: (i) be operated competently and efficiently as a ground level parking facility containing spaces for parking of not less than 203 standard size automobiles arranged as shown on Schedule K or as may otherwise be approved by Lessee, (ii) be available for use by the general public during such hours and on such days of the week as shall be approved by Lessee and at rates designed to encourage frequent turnover

*Second Amendment to Lease, Paragraph 3

rather than long term parking, (iii) not to be operated in any manner which would tend to discourage use thereof by customers, patrons and invitees of the Subtenants of those portions of the Property intended for retail use, and (iv) be maintained in good condition and repair and any loss or damage thereof resulting from fire, casualty or other causes shall be promptly restored with the least possible interruption thereof which is reasonable under the circumstances. Lessor covenants, represents and warrants that it is the owner in fee simple of all said Parcel D-10, except such portions thereof as are owned by the City and such portion thereof as may have been laid out as public streets, and that no other person, firm, corporation or other entity has any right, title, interest or estate therein whatsoever, except the City as the owner of a portion of said Parcel D-10 and the Commonwealth of Massachusetts as the owner of an easement over a portion of said Parcel D-10 for maintenance and repair of certain expressway improvements adjoining Parcel D-10, said easement being recorded at the Suffolk Registry of Deeds in Book , Page . Lessor covenants and agrees that forthwith upon execution of this Lease it will take all steps necessary to enable it to:

- (i) obtain from the City such easements, licenses or other agreements permitting the use and operation of the aforementioned ground level

- parking facility on such portion of Parcel D-10 as is owned by the City, and
- (ii) acquire free and clear title to an estate in fee simple absolute in the whole of Parcel D-10 (subject only to the rights of the Commonwealth of Massachusetts as aforesaid), including (without limitation) obtaining a discontinuance of the rights of the public in and to such portion thereof as may have been laid out as public streets, in exercise of its power of eminent domain.

Lessor shall cause a study to be made of the parking needs of the general vicinity of the Property and shall determine any future use of Parcel D-10 in accordance with the findings of such study, subject, however, to the operation of or approval under any applicable law or governmental regulation.

Section 10.11. Development of Other Parcels.

Lessor shall proceed, as expeditiously as practicable under prevailing economic conditions, to cause the development of those parcels abutting and in close proximity to the Property which are scheduled for development pursuant to the Plan.

Section 10.12. Certificate of Final Completion.

When the Rehabilitation has been completed as to the Quincy Market Phase or any Phase, and the same is substantially ready for occupancy, Lessor shall issue to Lessee a Certificate

of Final Completion which shall be in recordable form and shall be conclusive evidence of the fact that the Rehabilitation has been completed as to such Phase or Quincy Market Phase. If any designated portion of the Rehabilitation as to the Quincy Market Phase or any Phase is completed prior to substantial completion of the Rehabilitation as to such Phase or Quincy Market Phase, Lessor shall, at the request of Lessee, issue to Lessee a Certificate of Partial Completion; provided, however, that Lessor shall retain the right to rescind such a Certificate of Partial Completion if the portion of the Rehabilitation as to such Phase or Quincy Market Phase which is not completed at the time of the issuance of the Certificate of Partial Completion is not, due to an Event of Default by Lessee, completed thereafter in accordance with the provisions of this Lease.

If Lessor shall refuse or fail to issue a Certificate of Final Completion or Certificate of Partial Completion in accordance with the provisions of this Section 10.12, Lessor shall, within thirty (30) days after written request by Lessee, provide Lessee with a written statement, indicating in adequate detail in what respect Lessee has failed to complete the Rehabilitation (or stage thereof) in accordance with the provisions of this Lease, and what measures or actions will be necessary, in the opinion of Lessor, for Lessee to take or perform in order to obtain a Certificate of Final Completion or a Certificate of Partial Completion.

If Lessor shall refuse or fail to provide Lessee with such a written statement within thirty (30) days of a request therefor by Lessee, the Certificate of Final Completion or Certificate of Partial Completion, as the case may be, shall be deemed to have been issued.

ARTICLE XI

Maintenance, Ownership and
Alteration of Improvements

Section 11.01. Maintenance. Subject to the provisions of Article X, Lessee shall, at all times and at its expense, keep and maintain the Property, including any altered, rebuilt, additional or substituted buildings, structures and other improvements thereto, in good and safe condition and repair and appearance, except for ordinary wear and tear, and will with reasonable promptness make all structural and non-structural, foreseen and unforeseen and ordinary and extraordinary changes and repairs of every kind and nature which may be required to be made upon or in connection with the Property or any part thereof in order to keep and maintain the Property in good and safe condition and appearance. Lessor shall not be required to maintain, repair or rebuild, or to make any alterations, replacements or renewals of any nature or description to the Property or any part thereof, whether ordinary or extraordinary, structural or non-structural, foreseen or unforeseen, or to maintain the Property or any part thereof in any way, and Lessee hereby expressly waives the right to make repairs at the expense of Lessor, which right may be provided for in any statute or law in effect at the time of the execution and delivery of this Lease or any other statute or law which may thereafter be enacted.

Lessee will make such temporary closure of roofs and window openings as are necessary in order to afford reasonable protection against the elements to all buildings in those Phases as to which this Lease shall not have been terminated pursuant to Section 18.02 as of September 1, 1976 other than those Phases as to which Lessee shall have delivered Commencement Notices on or before that date; provided, however, that Lessee shall not be obligated to expend more than One Hundred Thousand (\$100,000.00) Dollars with respect to such work. If Lessee shall fail to complete such work by October 1, 1976, Lessor may perform the same and shall be entitled to deduct the cost thereof from the Deposit (as defined in Section 15.01), but Lessee shall not be liable to Lessor for any sum over and above the Deposit. In the event that the Deposit shall become returnable to Lessee, Lessor may nevertheless continue to hold the same until such work shall have been completed or until Lessee shall no longer be obligated to perform such work, whichever shall first occur.

Section 11.02. Ownership. Title to all Improvements shall be and remain in Lessee until the expiration of the Term, unless this Lease shall be sooner terminated as herein provided, and upon such expiration or sooner termination, title to such Improvements as are then remaining shall automatically pass to, vest in, and belong to Lessor without further action on the part of either party and without cost

or charge to the Lessor, except that in the event of the expiration or sooner termination of this Lease and if, at that time, any Leasehold Mortgagee shall exercise its option to obtain a new lease for the remainder of the Term pursuant to Section 15.07 hereof, then such title thereto shall automatically pass to, vest in and belong to such Leasehold Mortgagee or any designee or nominee of such Leasehold Mortgagee permitted hereunder, until the expiration of the Term, unless the Term shall thereafter be sooner terminated as otherwise herein provided. Lessor and Lessee covenant that to confirm the automatic vesting of title as provided in this Section 11.02, each will execute and deliver such further assurances and instruments of assignment and coveyance as may be required by the other for that purpose. During the Term, Lessee shall be entitled to claim depreciation on the Improvements and all equipment, fixtures and machinery therein contained, for all taxation purposes.

Section 11.03. Encroachments. In the event that any buildings, structures or other improvements to the Property, whether situated on the Property on the Commencement Date of thereafter constructed thereon, shall encroach upon any property, street or right-of-way adjoining or adjacent to the Property, or shall violate the agreements or conditions contained in any restrictive covenant affecting the Property

or any part thereof, or shall hinder or obstruct any easement or right-of-way, then, promptly after written request of Lessor or of any person affected by any such encroachment, violation, hindrance, obstruction, or impairment, Lessee shall, at its expense, either (i) obtain valid and effective waivers or settlements of all claims, liabilities and damages resulting from each such encroachment, violation, hindrance, obstruction or impairment, whether the same shall affect Lessor, Lessee or both, or (ii) make such changes in the buildings, structures and other improvements to the Property and take such other action as shall be necessary to remove such encroachments, hindrances or obstructions and to end such violations or impairments, including if necessary the alteration or removal of any building, structure or other improvements to the Property. Any such alteration or removal shall be made in conformity with the requirements of Section 11.05, and in the case of any such removal, to the same extent as if removals were alterations under the provisions of this Article XI.

Section 11.04. Alterations and Additions. Lessee shall not make or permit to be made any material alteration of, addition to or change in the Improvements, nor demolish all or any part of the Improvements, without the prior written consent of Lessor, which consent Lessor shall not unreasonably withhold. [In requesting such consent, Lessee shall submit to Lessor detailed plans and specifications of the proposed work

and an explanation of the need and reasons therefor. For purposes of this Section 11.04:

- (a) any proposed alteration, addition or change shall be deemed to be material, and
- (b) Lessor's consent shall be deemed to be reasonably withheld if the proposed alteration or change:
 - (i) affects the structural aspects of any of the Improvements,
 - (ii) substantially alters the exterior appearance of any of the Improvements, or
 - (iii) alters the character of any of the Improvements;

provided, however, that notwithstanding the provisions of this Section 11.04, Lessee or any Subtenant may also make or permit to be made any material alteration of, addition to or change in the Improvements without the consent of Lessor if such alteration, addition or change would not have required the approval of Lessor if it were included as a part of the Rehabilitation performed pursuant to Article X.]

In requesting such consent Lessee shall submit to Lessor, in sextuplicate, detailed plans and specifications of the proposed work and an explanation of the need and reasons therefor. Prior to giving any such consent, the Lessor shall submit such plans, specifications and explanation to the Commission and shall afford the Commission a reasonable opportunity (not to exceed twenty days) to

review the same and furnish Lessor with its
comments thereon. If the proposed alteration,
addition or change would affect the structural
aspects of any of the Improvements or would
alter the exterior appearance or the physical
character of any of the Improvements in any
significant respect, such alteration, addition
or change shall be deemed to be material and
Lessor may withhold its consent thereto in its
sole discretion. Notwithstanding the provisions
of this Section 11.04, after completion of the
Rehabilitation as to the Quincy Market Phase or
any Phase, Lessee or any Subtenant, without
obtaining Lessor's consent, may make or permit
to be made any material alteration of, addition
to or change in the Improvements in such Quincy
Market Phase or Phase in order to prepare the same
for occupancy by a Subtenant, provided that any
such alteration, addition or change shall be made
in accordance with and as permitted by such stand-
ards for Subtenant improvements as shall be included
in the Final Working Drawings and Specifications
approved by Lessor pursuant to Section 10.02 or any
substitute for or modification of such standards
which may be approved by Lessor from time to time.

Lessor's consent shall not be required with respect to any alteration of, addition to or change in the Improvements which is not material.

If Lessor's consent to any alteration of, addition to, change in or demolition of all in any part of the Improvement shall be required by this Section 11.04, Lessor shall, within forty-five (45) days after such consent is requested, notify Lessee of the granting or withholding of its consent thereto and, if such consent shall be withheld, the reasons therefor shall be set forth in detail in such notice. If within such forty-five (45) day period Lessor shall fail to notify Lessee of the granting or withholding of its consent as herein provided, such consent shall be conclusively deemed to have been given.

This Section 11.04 is intended only to govern physical changes in the Improvements and shall not be construed to permit or prohibit any particular use of the Property or any part thereof, which use shall be governed by Article IV.*

Section 11.05. Compliance During Alterations. All work done in connection with each such addition, alteration or change shall comply with the requirements of any insurance

*First Amendment to Lease, Paragraph 7.

policy required to be maintained by Lessee hereunder and with the orders, rules and regulations of the National Fire Protection Association or any other body exercising similar functions. Lessee shall promptly pay all costs and expenses of each such addition, alteration, substitution or replacement and shall discharge all liens filed against the Property arising out of the same. Lessee shall procure and pay for all permits and licenses required in connection with any such addition, alteration, substitution or replacement. At Lessee's request, Lessor shall join in applications for any such permits and licenses where joinder therein by the owner of the Property is required by law.

ARTICLE XII

Condemnation

Section 12.01. Total Taking. In the case of a Taking (other than for temporary use or of only the leasehold estate hereunder) of the fee of the entire Property, this Lease shall terminate as of the date on which such Taking shall be effective. In case of a Taking (other than for temporary use or of only the leasehold estate hereunder*) of such substantial part of the Property as shall result, in the good faith judgment of Lessee, in the Property remaining after such Taking (even if restoration were made) being economically unsuitable for the use being made of the Property at the time of such Taking, Lessee, at its option, may terminate this Lease by written notice given to Lessor within sixty (60) days after such Taking. Any Taking of the Property of the character referred to in this Section 12.01, which results in the termination of this Lease is referred to as a "Total Taking".

Section 12.02. Partial Taking. In the event of a Taking of a portion of the Property which is not a Total Taking, then and in that event:

- (a) this Lease shall remain in full force and effect as to the portion of the Property remaining immediately after such Taking, without any abatement or reduction of Rent, or any other sum payable hereunder;

*First Amendment to Lease, Paragraph 8.

- (b) Lessee will promptly commence and complete (subject to delay, hindrance or prevention by reason of any of the causes mentioned in Section 15.10) restoration of the Property as nearly as possible to its condition and character immediately prior to such Taking, except for any reduction in area caused thereby; provided that, in the case of a Taking for temporary use, Lessee shall not be required to effect such restoration until such Taking is terminated. Such a restoration shall be performed in a good and workmanlike manner and undertaken in accordance with plans and specifications submitted to and approved by Lessor; and
- (c) In the event the estimated amount of such restoration exceeds the amount of the award resulting from the Taking, Lessee may, at its option, give written notice to Lessor of its intent to terminate this Lease, and this Lease shall terminate on the date which is thirty (30) days after Lessor's receipt of such notice unless Lessor shall within said 30-day period agree to pay such excess.

Section 12.03. Application of Awards. Awards and other payments on account of a Taking (less costs, fees and expenses incurred by Lessor, Lessee and the "Depository" (as hereinafter defined) in connection with the collection thereof), shall be applied as follows:

- (a) Net awards and payments received on account of a Taking, other than (i) a Taking for temporary use, (ii) a Taking of only the leasehold estate hereunder or (iii) a Total Taking, shall be held and applied to pay the cost of restoration of the Property. The balance, if any, remaining shall be divided between Lessor and Lessee as they may agree and, in the absence of such agreement, such balance shall be paid to Lessor and Lessee in the ratio, as nearly as practicable, which (A) the then "Fair Market Value" (as hereinafter defined) of Lessor's reversionary interest in the Property bears to (B) then then Fair Market Value of Lessee's interest in the remainder of the Term if this Lease[.] provided, however, that Lessee's share of any such balance shall be applied first to the payment of any past due Rent or additional rent, including (without limitation) any past due Tax Payments.*

*First Amendment to Lease, Paragraph 9.

(b) Net awards and payments received on account of (i) a Taking for temporary use or (ii) a Taking of only the leasehold estate created by this Lease shall be [held and applied, first to the payment of Rent becoming due hereunder and Tax Payments; and, second, to the payment of the periodic installments of interest and principal becoming due on the indebtedness secured by any Leasehold Mortgage affecting Lessee's interest in the Property; provided that, if any portion of any such award or payment is made by reason of any damage to or destruction of the Property, such portion shall be held and applied as provided in the first sentence of clause (a) of this Section 13.02. The balance, if any, of such awards and payments shall be paid to Lessee.] paid to Lessee, except that,

(i) if any portion of any such award or payment is made by reason of any damage to or destruction of the Property, such portion shall be held and applied to pay the cost of restoration, and

(ii) if any portion of an award or payment on account of a Taking for temporary use relates to a period beyond the date of termination

of the Term, such portion shall be paid
to Lessor, and

(iii) if, at the time such award becomes
payable to Lessee, any Rent or
additional rent (including, without
limitation, any Tax Payments) provided
for hereunder shall be due and unpaid,
such award shall be first applied to
the payment thereof.*

(c) Net awards and payments received on account of a Total Taking shall be paid as set forth in the second sentence of clause (a) of this Section 12.03, provided that any determination of the respective Fair Market Value of Lessor's and Lessee's interest shall be made as if the Term of this Lease has not terminated.

(d) In the event that the Lease is terminated pursuant to Subsection 12.02(c), all net awards and payments shall be paid [to Lessor.] as set forth in the second sentence of clause (a) of this Section 12.03, provided that any determination of the respective Fair Market Value of Lessor's and Lessee's interests shall be made as if the Term of this Lease had not terminated.**

*First Amendment to Lease, Paragraph 10

**First Amendment to Lease, Paragraph 11

Section 12.04. Notice of Taking. In case of a Taking of all or any part of the Property thereon or the commencement of any proceedings or negotiations which might result in such Taking, the party having notice of such Taking or of the commencement of any such proceedings or negotiations shall promptly give written notice thereof to the other party. [Lessor and Lessee may each file and prosecute their respective claims for an award, but all awards and other payments on account of a Taking shall be governed by the provisions of this Article XII as though but one payment or award were made in respect of such Taking.] Lessor and Lessee shall jointly prosecute their claims for an award in a single proceeding, in which any Leasehold Mortgagee may join. Lessor and Lessee shall not prosecute separate claims for an award, except that Lessee and any Subtenant may prosecute separate claims for awards for moving expenses or on account of the Taking of any removable trade fixtures or for the unamortized portion of any leasehold improvements made by any Subtenant, but only to the extent that any such separate award shall not diminish the award made to Lessor and Lessee in respect of their joint claim.*

Section 12.05. Rights of Mortgagees. All awards or other payments received on account of a Taking shall be paid to the holder of the first Leasehold Mortgage affecting Lessee's interest in the Property, and, if there shall be none,

*First Amendment to Lease, Paragraph 12

then such awards or payments shall be paid to a bank or trust company selected by Lessee and approved by Lessor (which approval shall not be unreasonably withheld). Such Leasehold Mortgagee, bank or trust company is referred to herein as the "Depository". All such awards or other payments made by reason of any Taking shall be held in trust by the Depository until payable pursuant to the provisions hereof. Any awards or payments which are to be held and applied to pay the cost of restoration pursuant to clause (a) or clause (b)(i) of Section 12.03, shall be disbursed to Lessee as follows: From time to time as the work of restoration progresses, Lessee shall submit to the Depository a certificate of Lessee, signed by an executive officer thereof, and approved by an architect selected by Lessee and approved by Lessor (the "Architect"), which certificate shall (i) accurately describe the work for which Lessee is requesting payment and the cost incurred by Lessee in connection therewith, (ii) certify that Lessee has not theretofore received payment for such work, and (iii) contain or be accompanied by a statement by Lessor that the work for which Lessee is requesting payment has been performed in accordance with plans and specifications therefor approved by Lessor. Within five (5) days after receipt of any such certificate, the Depository shall pay to Lessee, from the awards or payments on hand, an amount equal to ninety percent (90%) of the amount of the cost of the work for which Lessee is requesting payment, as shown on such certificate. Upon completion of such work the remainder

of such cost (to the extent of the balance of the awards or payments held by the Depository) shall be paid to Lessee within five (5) days after the delivery to the Depository of a certificate of the Lessee, signed by an executive officer thereof, approved by the Architect, stating that the work has been completed and setting forth the total cost thereof, which certificate shall: (a) contain or be accompanied by a statement by Lessor that the work has been completed substantially in accordance with plans and specifications therefor approved by Lessor, and (b) be accompanied by either (i) an unconditional waiver or release of mechanics' and materialmen's liens executed by all persons or entities supplying labor and/or materials in connection with such work, or (ii) other evidence, reasonably satisfactory to Lessor, that the period for filing any such lien has expired and no such lien has been filed, or, if filed, has been bonded by Lessee to Lessor's and Depository's satisfaction. The Depository shall not be required to invest or to pay interest on any funds held by it hereunder, except that any funds not paid to Lessor or Lessee when payable hereunder and after demand therefor shall bear interest, accounting from the date of such demand, at the highest legal rate applicable to judgments in matters of contract in the Commonwealth of Massachusetts.*

Section 12.06. Fair Market Value. The term "Fair Market Value" as used in this Article XII means the price, as

*First Amendment to Lease, Paragraph 13

of the date in question, which a seller, willing but not obligated to sell, would accept for the Lessor's reversionary interest in the Property or the Lessee's interest in the estate created by this Lease (as the case may be), and which a buyer, willing but not obligated to buy, would pay therefor in an arm's length transaction. Fair Market Value shall be determined by the parties or, if the parties are unable to agree thereon, by the following procedure: Whenever the parties are unable to agree as to the Fair Market Value of the Lessor's reversionary interest in the Property or the Lessee's interest in the estate created by this Lease (as the case may be), either party may give written notice of such disagreement to the other party and in such notice shall designate the first appraiser (the "First Appraiser"). Within fifteen (15) days after the service of such notice, the other party shall give written notice to the party giving the first notice, which notice shall designate the second appraiser (the "Second Appraiser"). If the Second Appraiser is not so designated within or by the time above specified, then the party designating the First Appraiser may request appointment of the Second Appraiser by the Chief Judge of the United States District Court for the District of Massachusetts or any successor federal court of original jurisdiction. The First and Second Appraisers so designated or appointed shall meet within ten (10) days after the Second Appraiser is appointed and if, within thirty (30) days after the Second Appraiser is appointed, the First and Second Appraisers do not agree upon the Fair Market Value of the respective interests of the

parties (as the case may be), they shall appoint a third appraiser (the "Third Appraiser") who shall be a competent and impartial person; and if they shall be unable to agree upon such appointment within ten (10) days after the time aforesaid, the Third Appraiser shall be selected by the parties themselves, if they can agree thereon within a further period of fifteen (15) days. If the parties do not so agree, then either party, on behalf of both, may request that such appointment be made by the Chief Judge of the United States District Court for the District of Massachusetts or any successor federal court of original jurisdiction. In the event of the failure, refusal or inability of any appraiser to act, a new appraiser shall be appointed in his stead, which appointment shall be made in the same manner as hereinbefore provided for the appointment of such appraiser so failing, refusing or being unable to act. Each party shall pay the fees and expenses of the appraiser appointed by such party, or in whose stead, as above provided, such appraiser was appointed, and the fees and expenses of the Third Appraiser and all other expenses, if any, shall be borne equally by both parties. Any appraiser designated to serve as above provided, shall be disinterested, shall be a member of the American Institute of Real Estate Appraisers (or any successor association or body of comparable standing if such institute is not then in existence), and shall be familiar with prop-

erty values in metropolitan Boston, Massachusetts. The appraisers shall determine the Fair Market Value of the respective interests of the the parties in question. A decision joined in by two of the three appraisers shall be the decision of all the appraisers. After reaching a decision, the appraisers shall give written notice thereof to Lessor and Lessee which notice shall state the Fair Market Value so determined, and the Fair Market Value so stated shall be considered Fair Market Value for the purposes of this Lease and shall be binding upon Lessor and Lessee until such time as a new determination (if any) of such Fair Market Value shall be required to be made under the terms of this Lease. If the appraisers shall fail to reach a decision within ninety (90) days after the appointment of the Third Appraiser either party may make application to any court of competent jurisdiction for a determination by such court of the Fair Market Value of Lessor's reversionary interest in the Property and Lessee's interest in the estate created by this Lease as of the date in question.

ARTICLE XIII

Insurance; Restoration and
Reconstruction of Property

Section 13.01. Insurance. During the Term, Lessee at its own cost and expense and as additional rent shall keep the Property insured continuously with the following kinds of insurance and with coverage in amounts not less than stated below in this Section 13.01, written by companies of recognized standing which are authorized to transact the business of insurance in the Commonwealth of Massachusetts and are well-rated, in the opinion of Lessor, by national rating organizations, and such insurance shall name as the insureds [Lessor and Lessee, as their interests may appear:] Lessor, Lessee, and, if required by a Leasehold Mortgage, any Leasehold Mortgagee, as their respective interests may appear:*

- (a) Fire and extended coverage insurance in amounts equal to the actual replacement cost (without deduction for depreciation) of the Property and equipment. At any time during the Term, if Lessor shall be of the opinion that the amount of any such insurance shall be less than the actual replacement cost (without deduction for depreciation) of the property and equipment, and shall so notify Lessee, Lessee, within thirty (30) days after such notice is given, shall arrange to increase the

*First Amendment to Lease, Paragraph 14

amount of such insurance to such amount as Lessor shall reasonably request, not exceeding, however, such actual replacement cost (without deduction for depreciation).*

- (b) Such comprehensive general public liability insurance as will protect Lessee and Lessor, their agents and employees, from any and all claims and damages for personal injuries, or death, or from damages to any property of Lessee or of the public, which may arise out of or in connection with the performance of any work or operations by Lessee in, on or over the Property during the Rehabilitation whether said work or operations be by Lessee, or its contractors or subcontractors, or by anyone directly or indirectly employed by any of them. The amount of comprehensive general public liability insurance to be maintained by Lessee during the construction period shall be not less than one million dollars (\$1,000,000) for injuries or death sustained by any one person and no less than two million dollars (\$2,000,000) for injuries or death sustained by two or more persons in any one accident and not less than three million dollars (\$3,000,000) for property damage.

*First Amendment to Lease, Paragraph 15

- (c) Immediately upon the issuance by the Lessor of the [Certificate of Final Completion] Certificate of Final Completion for the Quincy Market Phase and all of the other Phases, if any, as to which Lessee shall become obligated to complete the Rehabilitation*, Lessee shall secure and thereafter maintain in full force and effect throughout the Term general public liability insurance in such amounts as [Lessor may, from time to time, deem adequate.] shall be customarily carried in the Metropolitan Boston area by other owners of similar premises and as shall be approved by Lessor (which approval shall not be unreasonably withheld).**
- (d) Workmen's compensation insurance covering all persons employed by Lessee in connection with any work done on or about the Property with respect to which claims for death or bodily injury could be asserted against Lessor, Lessee or the Property, or in lieu of such workmen's compensation insurance, a program of self-insurance complying with the rules, regulations and requirements of the appropriate state agency from time to time in force.

*First Amendment to Lease, Paragraph 16(a)

**First Amendment to Lease, Paragraph 16(b)

(e) Such other insurance on the Property [in such amounts and] against such other insurable hazards which at the time are commonly obtained in the case of property similar to the Property, including war-risk insurance when and to the extent obtainable at reasonable cost from the United States or any agency thereof. The amount of any insurance shall be such as shall be customarily carried in the Metropolitan Boston area by other owners of similar premises and as shall be approved by Lessor (which approval shall not be unreasonably withheld).*

(f) Rental or business interruption insurance protecting Lessee and Lessor from any loss of revenue (including rental payments at a level equal to those paid for the payment period immediately preceding any such loss) due to any insurable loss which may interrupt such rental payments.

Section 13.02. Continuation of Insurance. Each such insurance policy shall be written to become effective at the time Lessee becomes subject or exposed to the risk or hazard covered thereby, and shall be continued in full force and effect for such period as the Lessee is subject or exposed to such risk or hazard.

*First Amendment to Lease, Paragraph 17

Section 13.03. Blanket Policies. Nothing in this Article XIII shall prevent Lessee from effecting insurance hereunder under a blanket policy or policies; provided, that any such policy or blanket insurance of the kind provided for in Subsections 13.01(a) and (f) shall specify therein (or Lessee shall furnish Lessor with a written statement from the insurer under such policy specifying) the amount of the total insurance allocated to the Property and equipment on the Property, which amount shall not be less than the amount required by Section 13.01 hereof.

Section 13.04. Noncancellation. All insurance policies shall provide, to the extent obtainable, an agreement by the insurer that it will not cancel such policy except after thirty (30) days prior notice has been given to Lessor, that it will waive any right of subrogation that such insurer may have, and that any loss otherwise payable thereunder shall be payable notwithstanding any act of negligence of Lessor or Lessee or any occupant claiming under Lessee which might, absent such agreement, result in a forfeiture of all or a part of such insurance payment.

Section 13.05. Contest of Claims. Lessor shall not be required to prosecute any claim against, or to contest any settlement proposed by, any insurer, provided, that Lessee may, at its expense, prosecute any such claim or contest any such settlement. In such event, Lessee may bring such prosecution

or contest in the name of Lessor, Lessee, or both, and Lessor will join therein at Lessee's written request upon the receipt by Lessor of an indemnity, satisfactory to it, from Lessee against all costs, liabilities and expenses in connection with such prosecution or contest. Any Leasehold Mortgagee shall have the right to join with Lessee and/or Lessor in any such prosecution or contest.*

Section 13.06. Adjustment of Losses. Insurance claims by reason of damage to or destruction of any portion of the Property shall be adjusted by Lessee, but Lessor and any Leasehold Mortgagee shall have the right to join with Lessee in adjusting any such loss. Subject to the provisions of Section 13.10 hereof, so long as this Lease is in full force and effect, the proceeds paid pursuant to such claims shall be made available to Lessee.

Section 13.07. Remedies. In the event Lessee at any time refuses, neglects or fails to secure and maintain in full force any or all of the insurance required pursuant to this Lease and if Lessor shall give notice thereof to each Leasehold Mortgagee whose name and address has been furnished to Lessor pursuant to Section 9.03, and if such default shall not be cured by such Leasehold Mortgagee within fifteen (15) days after such notice is given, then**, Lessor, at its option, may procure or renew such insurance, and all amounts of money paid therefor by Lessor shall be payable by Lessee to Lessor

*First Amendment to Lease, Paragraph 18

**First Amendment to Lease, Paragraph 19

with interest thereon at the rate of four and one-half (4-1/2) percentage points per annum above the large business prime rate charged from time to time on short term loans to large businesses with the highest credit standing by The Chase Manhattan Bank of New, York, N.A. from the date the same were paid by Lessor to the date of payment thereof by Lessee. Lessor shall notify Lessee, and any Leasehold Mortgagee whose name and address has been furnished by Lessee to Lessor pursuant to Section 9.03, in writing of the date, purposes and amounts of any such payments made by it, and Lessor may treat such failure of the Lessee to obtain insurance as an Event of Default pursuant to Article XV hereof.

Section 13.08. Effect of Lessor Approval. No acceptance or approval of any insurance policy or policies by Lessor shall relieve or release or be construed to relieve or release Lessee from any liability, duty or obligation assumed by, or imposed upon it by, the provisions of this Lease[.] , other than the obligation to furnish the insurance policy or policies so accepted or approved.*

Section 13.09. Certificate of Insurance. Lessee shall deliver to Lessor promptly after the execution and delivery of this Lease the original or duplicate policies or certificates of the insurance which is required to be maintained by Lessee hereunder and Lessee shall, within thirty (30) days prior to the expiration of any such insurance deliver other original or duplicate policies or certificates of the insurers evidencing the renewal of such insurance.

*First Amendment to Lease, Paragraph 20

Section 13.10. Application of Proceeds. In the event that the Property, or any part thereof, is damaged or destroyed, Lessee shall promptly give the Lessor written notice of such damage or destruction, setting forth the date on which such damage or destruction occurred. Whenever any of the Property shall have been damaged or destroyed, Lessee shall promptly make proof of loss and shall proceed promptly to collect, or cause to be collected, all valid claims which may have arisen against insurers or others based upon any such damage or destruction. Sums of money received as payments for any losses under said insurance policies, shall be used and expended for the purpose of fully repairing or reconstructing the Property, or part thereof, which has been destroyed or damaged. Subject to the provisions of this Section 13.10, if any sums remain after such repair or reconstruction has been fully completed, such remainder shall belong to Lessee.

If the entire amount of any proceeds paid pursuant to any such claim does not exceed \$25,000 then such proceeds shall be payable to Lessee, except that if the Lessee is then in default under this Lease, such proceeds shall be paid over to Lessor who shall apply the proceeds first to the rebuilding, replacing and repairing of the Property, and second, to the curing of such default. Any remaining proceeds shall be paid over to Lessee.

If the entire amount of any proceeds paid pursuant to any such claim exceeds \$25,000, then such proceeds shall be paid by the recipient thereof to the "Insurance Trustee" (as hereinafter defined). If, at the time such proceeds become payable, there is a Leasehold Mortgage on the Property, the first Leasehold Mortgagee shall serve as the Insurance Trustee, but if there is no Leasehold Mortgage at that time, the Insurance Trustee shall be such commercial bank or trust company as shall be designated by Lessee and approved by Lessor, which approval shall not be unreasonably withheld or delayed. The Insurance Trustee shall hold such proceeds in trust and shall disburse same to Lessee [but only upon certificates of Lessee, signed by an executive officer thereof and approved by Lessor (which approval shall not be unreasonably withheld or delayed) delivered to the Insurance Trustee from time to time as the work of rebuilding, replacing and repairing the damage or destruction to the Property required by Section 13.11 hereof progresses, each such certificate describing such work for which Lessee is requesting payment, the cost incurred by Lessee in connection therewith and certifying that Lessee has not theretofore received payment for such work. Upon completion of such work any remaining proceeds will be paid to Lessee upon delivery to the Insurance Trustee of a certificate of Lessee, signed by an executive officer thereof, and approved by Lessor (which approval shall not be unreasonably withheld or delayed), to the effect that

such work has been completed and complies with the requirements of Section 13.11 hereof;] in accordance with the following procedure: From time to time as the work of rebuilding, replacing and repairing the damage or destruction to the Property required by Section 13.11 progresses, Lessee shall submit to the Insurance Trustee a certificate of Lessee, signed by an executive officer thereof, and approved by an architect selected by Lessee and approved by Lessor (the "Architect"), which certificate shall (i) accurately describe the work for which Lessee is requesting payment and the cost incurred by Lessee in connection therewith, (ii) certify that Lessee has not theretofore received payment for such work, and (iii) contain or be accompanied by a statement by Lessor that the work for which Lessee is requesting payment has been performed in accordance with plans and specifications therefor approved by Lessor. Within five (5) days after receipt of any such certificate, the Insurance Trustee shall pay to Lessee, from the insurance proceeds on hand, an amount equal to ninety percent (90%) of the amount of the cost of the work for which Lessee is requesting payment, as shown on such certificate. Upon completion of such work the remainder of such insurance proceeds shall be paid to Lessee within five (5) days after the delivery to the Insurance Trustee of a certificate of the Lessee, signed by an executive officer thereof, approved by the Architect, stating that the work has been completed and setting forth the total cost

thereof, which certificate shall: (a) contain or be accompanied by a statement by Lessor that the work has been completed substantially in accordance with plans and specifications therefor approved by Lessor, and (b) be accompanied by either (i) an unconditional waiver of mechanics' and materialmen's liens executed by all persons or entities supplying labor and/or materials in connection with such work, or (ii) other evidence reasonably satisfactory to Lessor, that the period for filing any such lien has expired and not such lien has been filed, or, if filed, has been bonded by Lessee to Lessor's and Insurance Trustee's satisfaction;* provided, however, that any amount of such proceeds in excess of the cost of the completion of such work, shall, if the Lessee is then in default under this Lease, be paid over to Lessor which shall apply the same to the cost of curing such default, and if any balance remains the same shall be paid over to the Lessee; provided further, however, that if Lessee shall be diligently proceeding to cure such default pursuant to Subsection 15.02(a), any such proceeds shall be paid over to Lessee upon the curing of such default. The Insurance Trustee shall not be required to invest or pay interest on any funds held by it hereunder, except that any funds not paid to Lessor or Lessee when payable hereunder and after written demand therefor shall bear interest, accounting from the date of such

*First Amendment to Lease, Paragraph 21

demand, at the highest legal rate applicable to judgments in matters of contract in the Commonwealth of Massachusetts.*

Section 13.11. Reconstruction. Lessee shall commence and complete, in a good and workmanlike manner, the reconstruction or repair of any part of the Property damaged or destroyed after Lessor has approved (which approval shall not be unreasonably withheld or delayed) Lessee's plans, drawings, specifications and construction schedule for such reconstruction or repair. Lessee shall not, however, be required to expend, in respect of any such reconstruction or repair made necessary by reason of a casualty covered by a policy or policies of insurance applicable to the Property meeting the requirements of this Article XIII, a sum which exceeds the available net proceeds of such policy or policies of insurance; provided, however, that if the cost of such reconstruction or repair shall exceed such available net proceeds and, if Lessor shall be unwilling to pay such excess, Lessee shall reconstruct or repair the portion of the Property so damaged as nearly as possible to the same state or condition as existed prior to the occurrence of such damage, given the amount of such available net proceeds. As used in this Section 13.11 and in Section 13.12, the term "available net proceeds" means the sum actually paid by the insurer or insurers in respect of the claim in question, less all costs and expenses incurred by Lessor, Lessee, any Leasehold Mortgagee or the Insurance Trustee in the collection,

*First Amendment to Lease, Paragraph 22

holding, and disbursement of same, including (without limitation) reasonable attorney's fees. In the event any part of the Property is damaged or destroyed by reason of any casualty which is not required to be insured against pursuant to Section 13.01 and is not in fact insured against, then at Lessee's option, in lieu of rebuilding, replacing or repairing the portion of the Property so damaged or destroyed, Lessee may give notice to Lessor, within sixty (60) days after the occurrence of such damage or destruction, of Lessee's election to terminate this Lease as to the portion of the Property so damaged or destroyed and this Lease shall thereupon terminate as to such portion of the Property and Lessee shall have no further obligation hereunder with respect thereto, except that, if Lessor shall so request within thirty (30) days after such notice is given, Lessee shall, at its expense, promptly demolish any buildings or other improvements situated on the portion of the Property as to which this Lease shall have been terminated and shall clear and grade such portion of the Property. Lessor and Lessee shall, at the request of either, execute such instruments or documents as may be reasonably necessary or desirable in order to amend this Lease to delete such portion of the Property from the description of the property demised hereby.*

*First Amendment to Lease, Paragraph 23

[Section 13.12. Lessee's Rights in Event of Major Casualty. Notwithstanding the provisions of Section 13.11, if the Property shall be substantially damaged or destroyed in any single casualty so that the Property shall be unsuitable for restoration for Lessee's continued use and occupancy in Lessee's business, then at Lessee's option, in lieu of rebuilding, replacing or repairing the Property as provided in this Lease, Lessee may give notice to Lessor, within sixty (60) days after the occurrence of such damage or destruction, of Lessee's intention to terminate this Lease on any business day specified in such notice which occurs not less than sixty (60) nor more than one hundred twenty (120) days after the date of such damage or destruction, provided that such notice shall be accompanied by a certificate of Lessee, signed by the President or Vice-President thereof, stating that in the reasonable judgment of Lessee, the Property is economically unsuitable for Lessee's continued use and occupancy by reason of such damage or destruction. This Lease shall thereupon terminate on such termination date, except with respect to obligations and liabilities of Lessee under this Lease, actual or contingent, which have arisen on or prior to such date. If this Lease is terminated pursuant to this Section 13.12, all insurance proceeds then held by Insurance Trustee shall be paid to Lessor.]

Section 13.12. Lessee's Rights in the Event of Major Casualty. Notwithstanding the provisions of Section 13.11, if the Property shall be substantially damaged or destroyed in any single

casualty so that the Property, if restored to the extent required by this Article XIII, shall be unsuitable for Lessee's continued use and occupancy in Lessee's business, then at Lessee's option, in lieu of rebuilding, replacing or repairing the Property as provided in this Lease, Lessee may give notice to Lessor, within sixty (60) days after the occurrence of such damage or destruction, of Lessee's intention to terminate this Lease on any business day specified in such notice which occurs not less than sixty (60) nor more than one hundred twenty (120) days after the date of such damage or destruction, provided that such notice shall be accompanied by a certificate of Lessee, signed by the President or Vice-President thereof, stating that in the good faith judgment of Lessee, reasonably exercised, the Property, if restored by Lessee to the extent required by this Article XIII, would not yield sufficient annual net income to provide Lessee with an annual return on Lessee's investment in the Property (which investment shall not include the proceeds of any loan secured by a Leasehold Mortgage) which is at least equal to the lesser of (i) the average annual rate of return on such investment actually realized by Lessee during the three (3) full Fiscal Years next preceding such damage or destruction, or, if the Rehabilitation of the Property shall not have been completed and in operation that long, then during all such Fiscal Years since the completion of such Rehabilitation; or (ii) the prevailing annual rate of return on investments in comparable properties in the Metropolitan Boston area as of the

date of such damage or destruction provided, further, however,
that, if such damage or destruction shall occur prior to the
completion of three (3) full Fiscal Years following issuance
of certificates of Final Completion for the Quincy Market
Phase and all of the other Phases, if any, as to which Lessee
shall become obligated to complete the Rehabilitation, and if
the available net proceeds of the policy or policies of insurance
applicable to such damage or destruction shall be insufficient
to permit Lessee to reconstruct or repair the Property to the
same state or condition as existed prior to the occurrence of
such damage, and if Lessor shall be unwilling to pay such
deficiency, then clause (i) above shall not apply to such
certificate. As used in this Section 13.12, the term "annual
net income" means all income of every kind realized (or reason-
ably expected to be realized) by Lessee in the operation of the
Property during the twelve month period in question, less real
estate taxes, ordinary and necessary operating expenses, and
debt service on loans secured by Leasehold Mortgages, all as
actually paid or incurred (or reasonably expected to be paid
or incurred) during the same period, but not including non-cash
charges such as depreciation or amortization of capital improve-
ments. In determining comparability of other properties for the
purposes of clause (ii), above, Lessee may consider in addition
to other relevant factors, the size, location, uses and condition
of such properties deemed by Lessee to be comparable to the Property.
If such notice is given, this Lease shall terminate on the ter-
mination date specified therein, except with respect to obligations

and liabilities of Lessee under this Lease, actual or con-
tingent, which have arisen on or prior to such date. If this
Lease is terminated pursuant to this Section 13.12, all insurance
proceeds then held by the Insurance Trustee shall be divided
between Lessor and Lessee in the same manner prescribed for the
division of net awards and payments received on account of a
Taking set forth in the second sentence of clause (a) of
Section 12.03, provided that any determination of the Fair Market
Value of Lessor's and Lessee's interest shall be made as if the
Term of this Lease has not terminated.*

*First Amendment to Lease, Paragraph 24

ARTICLE XIV

Transfer; Assignment; Subletting

Section 14.01. Definitions. As used herein, the term:

(a) "Transfer" means:

- (i) any total or partial sale, assignment or conveyance (other than a Sublease), or any trust or power, or any transfer in any other mode or form of or with respect to this Lease of the leasehold estate in the Property or any part thereof or any interest therein, or any contract or agreement to do any of the same;
- (ii) any transfer of the stock of the Lessee or of any Owner, other than an Owner whose shares are publicly traded; or
- (iii) any merger, consolidation or sale or lease of all or substantially all of the assets of the Lessee or of any Owner, other than an Owner whose shares are publicly traded.

(b) "Owner" means:

- (i) any person, firm, corporation or other entity which owns, directly or indirectly, legally or beneficially, ten percent (10%) or more of the stock or other form of ownership interest of the Lessee; and

- (ii) any person, firm, corporation or other entity which owns, directly or indirectly, legally or beneficially, more than fifty percent (50%) of the stock or other form of ownership interest of any entity described in clause (i) or this clause (ii), but shall not include any shareholder of an Owner whose shares are publicly traded.
- (c) "Owner whose shares are publicly traded" means an Owner:
 - (i) who has filed an effective registration statement with the Securities & Exchange Commission (or its successor) with respect to the shares of all classes of its voting stock or of all classes of any other form of ownership interest which includes voting rights; and
 - (ii) whose voting stock and other form of ownership interest described in clause (i) is listed for trading purposes on a securities exchange subject to the regulatory jurisdiction of the Securities & Exchange Commission (or its successor) or is publicly traded over the counter.

Section 14.02. Purposes of Restrictions on Transfer.

This Lease is granted to Lessee solely for the purpose of redevelopment of the Property and its subsequent use in accordance with the terms hereof, and not for speculation in landholding. Lessee recognizes that, in view of:

- (a) The importance of the redevelopment of the Property to the general welfare of the community;
- (b) The substantial financing and other public aids that have been made available by law and by the United States and the City for the purpose of making such development possible; and
- (c) The fact that a transfer of the stock in the Lessee or a substantial part thereof, or any other act or transaction involving or resulting in a significant change in the ownership or distribution of such stock or with respect to the identity of the parties in control of Lessee or the degree thereof, is for practical purposes, a transfer or disposition of the leasehold interest in the Property then owned by Lessee;

the qualifications and identity of Lessee and any Owner are of particular concern to the community and Lessor. Lessee further recognizes that it is because of such qualifications

and identity that Lessor is entering into this Lease with Lessee, and, in so doing, is further willing to accept and rely on the obligations of Lessee for the faithful performance of all undertakings and covenants hereby it to be performed.

Section 14.03. Prohibited Transfers. Except as expressly permitted herein, Lessee, on behalf of itself and any and all Owners, represents and agrees that neither Lessee nor any Owner has made or created and will not make or create or suffer to be made or created any Transfer.

Any transfer made in contravention of this Section 14.03 shall be void and shall be deemed to be a default hereunder whether or not the Lessee knew of or participated in such transfer.

Section 14.04. Permitted Transfers. Notwithstanding the provisions of Section 14.03, the following transfers shall be permitted hereunder;

- (a) Following issuance of the [Certificate of Final Completion], Certificate of Final Completion for the Quincy Market Phase and all of the other Phases, if any, as to which Lessee shall become obligated to complete the Rehabilitation.* any Transfer to (i) an entity which is, in the reasonable judgment of Lessor, one with demonstrated competence in the business of real property management

*First Amendment to Lease, Paragraph 25

and in the management, leasing and operation of retail and office space, or (ii) an entity which retains, under arrangement satisfactory to Lessor, another entity as manager of the Property, which other entity is, in the reasonable judgment of Lessor, one with demonstrated competence in the business of real property management and in the management, leasing and operation of retail and office space. As used in clause (ii) above, the phrase "arrangements satisfactory to Lessor" may include approval by Lessor of the agreement under which the managing entity is retained, a requirement that there shall be no change in the identity of the managing entity or in the duties and obligations of such managing entity without prior approval of Lessor, or such other conditions as may be reasonably imposed by Lessor in order to insure that the Property shall be completely managed.

[(b) Any Transfer to an Institutional Lender by Leasehold Mortgage or following issuance of the Certificate of Final Completion, any Transfer to an Institutional Lender.]

(b) Any Transfer by Leasehold Mortgage to an Institutional Lender or to an agent, designee

or nominee of an Institutional Lender which is wholly owned or controlled by an Institutional Lender or, following issuance of Certificates of Final Completion of the Quincy Market Phase and all of the other Phases, if any, as to which Lessee shall become obligated to complete the Rehabilitation, any Transfer to an Institutional Lender or to any such agent, designee or nominee of an Institutional Lender.*

- (c) Any Transfer directly resulting from the foreclosure of a Leasehold Mortgage of the granting of a deed in lieu of foreclosure of a Leasehold Mortgage[.] or any Transfer made by the purchaser at foreclosure of a Leasehold Mortgage or by the grantee of a deed in lieu of foreclosure of a Leasehold Mortgage, provided that such purchaser or grantee is an Institutional Lender or an agent, designee or nominee of an Institutional Lender which is wholly owned or controlled by an Institutional Lender.**
- (d) Any Transfer to a joint venture, general or limited partnership, joint stock association or Massachusetts business trust, the majority interest in which is held by Lessee and the sole minority interests in which are held by an Institutional Lender or such other persons, firms,

*First Amendment to Lease, Paragraph 26

**First Amendment to Lease, Paragraph 27

corporations or other entities as to which Lessor shall have given its approval.

- (e) Any Transfer to an entity which is not an Owner, all of the stock or other form of ownership interest of which is owned by an Owner.
- (f) Any Transfer resulting from the death of Lessee or of an Owner, provided that, if, as a result of any such Transfer, there shall not be as lessee or Owner, an entity meeting the requirements of subsection (a) above, then within ninety (90) days after such Transfer, the party or parties to whom such Transfer is made shall either make a Transfer permitted under subsection (a) above or shall retain another entity as property manager pursuant to the provisions of clause (ii) of subsection (a) above.

Section 14.05. Notice of Transfer; Information as to Shareholders.

- (a) Unless the notice required by subsection (c) of this Section 14.05 shall have been given, Lessee shall give or cause to be given to Lessor written notice of any Transfer of which Lessee or its officers shall have knowledge, within ten (10) days after any such Transfer shall occur.

(b) Lessee shall, on the Commencement Date and on each anniversary of the Commencement Date throughout the Term and at such other time or times as Lessor may reasonable request, furnish Lessor with a complete statement, subscribed and sworn to by the President or Vice-President and the Secretary or Assistant Secretary of Lessee, setting forth the full names and addresses of holders of the stock of Lessee and the extent of their holdings, and in the event any other parties have a beneficial interest in such stock, their full names and addresses and the extent of such interest as determined or indicated by the records of Lessee, by inquiry which such officers shall make of all parties who on the basis of such records own ten percent (10%) or more of the stock of Lessee or by such other knowledge or information as either of such officers shall have. Notwithstanding the foregoing, the information required by this subsection (b) shall not be required to be furnished with respect to the shareholders of any Owner whose shares are publicly traded; provided that Lessee or such Owner shall furnish the Lessor with:

(i) a copy of each annual report filed by such Owner with the Securities and Exchange Commission during the Term pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended to the date hereof and (ii) a copy of any proxy statement filed with the Securities and Exchange Commission by such Owner with respect to the election of its directors.

- (c) With respect to any Transfer permitted pursuant to subsection (a) of Section 14.04, Lessee shall give or cause to be given, not less than thirty (30) days prior to any such Transfer, notice that such Transfer is contemplated, which notice shall specify the identity of the proposed transferee and shall state either (i) the qualifications of such proposed transferee demonstrating the competence of such proposed transferee in the business of real property management and the management, leasing and operation of retail and office space, or (ii) with particularity, the arrangements which have been made by the proposed transferee for the retention of a manager of the Property, including the qualifications of such proposed manager demonstrating the competence of such proposed

manager in the business of real property management and the management, leasing and operation of retail and office space and including a copy of the proposed agreement by which such proposed manager is to be retained. Such notice shall be accompanied by a copy of the form of agreement by which Lessee proposes to satisfy the requirements of Section 14.06. Within thirty (30) days after such notice is given Lessor shall respond to such notice and shall indicate in its response (i) whether the proposed form of agreement required by Section 14.06 is satisfactory and if not the reasons therefor, and (ii) whether the proposed transferee meets the requirements of subsection (a) of Section 14.04 and if Lessor shall indicate that such proposed transferee does not meet such requirements, Lessor shall state, with particularity the reasons giving rise to such judgment. If Lessor shall fail to so respond within such time, the proposed form of agreement accompanying such notice shall be conclusively deemed to be satisfactory to Lessee and the proposed transferee shall be conclusively deemed to meet the requirements of subsection (a) of Section 14.04.

Section 14.06. Effectuation of Certain Permitted Transfers. No Transfer of the nature described in clause (i) of subsection (a) of Section 14.01 and permitted pursuant to Section [14.03] 14.04* (other than a Transfer by a Leasehold Mortgage) shall be effective unless, at the time thereof, the entity to which such Transfer is made (other than a Leasehold Mortgagee), by instrument in writing satisfactory to Lessor and in form recordable among the land records, shall, for itself and its successors and assigns, and especially for the benefit of Lessor, expressly assume all of the obligations of Lessee under this Lease and agree to be subject to all conditions and restrictions to which Lessee is subject; provided, however, that [with respect to any Transfer directly resulting from the foreclosure of a Leasehold Mortgage, or the granting of a deed in lieu of foreclosure of a Leasehold Mortgage, such transferee shall not be required to assume any liability under this Lease with respect to any matter arising prior or subsequent to the period of such transferee's actual ownership of the leasehold estate created by this Lease;] such transferee shall not be required to assume any personal liability under this Lease with respect to any matter arising prior or subsequent to the period of such transferee's actual ownership of the leasehold estate created by this Lease (it being understood, nevertheless, that

*First Amendment to Lease, Paragraph 28

the absence of any such liability for such matters shall not impair, impede or prejudice any other right or remedy available to Lessor for default by Lessee);* and provided further, that the fact that any such transferee of, or any other successor in interest whatsoever to, the leasehold estate in the Property, or any part thereof, shall whatever the reason, not assume such obligations or so agree, shall not (unless and only to the extent otherwise specifically provided in this Lease or agreed to in writing by Lessor) relieve or except such transferee or successor of or from such obligations, conditions or restrictions, or deprive or limit Lessor of or with respect to any rights, remedies or controls with respect to the leasehold estate in the Property or the construction of Improvements.

Section 14.07. Transfers of Lessor's Interests.

Lessor represents and agrees for itself, its successors and assigns, that Lessor has not made or created and that it will not, prior to the first to occur of:

- [(a) the Rehabilitation completion date set forth in Section 10.07;
or
- (b) the issuance of the Certificate of Final Completion,]
- (a) the last date for completion of the Quincy Market Phase or any of the other Phases as

*First Amendment to Lease, Paragraph 29

to which Lessee shall become obligated to
complete the Rehabilitation fixed pursuant to
Section 10.07; or

(b) the issuance of Certificate of Final Comple-
tion for the Quincy Market Phase and all of the
other Phases, if any, as to which Lessee shall
become obligated to complete the Rehabilitation,*

make or create or suffer to be made or created any total or
partial sale, assignment, conveyance, mortgage, trust or
power, or other transfer in any mode or form of or with respect
the Lessor's reversionary interest in the Property or any part
thereof or any interest therein or any contract or agreement to
do any of the same, without the prior written consent of the
Lessee, which consent Lessee may in its sole discretion withhold.
At any time [after the Rehabilitation completion date set forth
in Section 10.07 or issuance of the Certificate of Final Comple-
tion,] on or after the first to occur of (i) the last date for
completion of the Quincy Market Phase or any Phase as to which
Lessee shall become obligated to complete the Rehabilitation fixed
pursuant to Section 10.07, or (ii) the issuance of Certificates
of Final Completion for the Quincy Market Phase and all other
Phases, if any, as to which Lessee shall become obligated to
complete the Rehabilitation,**

*First Amendment to Lease, Paragraph 30

**First Amendment to Lease, Paragraph 31

Lessor may sell, assign, mortgage, convey or otherwise transfer all or any part of its interest in the Property or this Lease without obtaining consent of Lessee; provided, that the assignee, mortgagee, purchaser or transferee shall expressly assume all of the obligations of Lessor hereunder by a written instrument (in form and substance reasonably satisfactory to Lessee) delivered to Lessee at the time of such sale, assignment, conveyance or other transfer.

Section 14.08. Subletting. Subject to the provisions of Section 4.06 and 4.07, Lessee shall have the absolute right, without the necessity of obtaining the consent or approval of Lessor, to sublet any part of the Property or Improvements at any time and from time to time during the Term to such person or persons and upon such terms and conditions as Lessee shall, in its sole discretion, deem fit and proper; provided, however, that at any one time Lessee shall not sublease to any one Subtenant or combination of Subtenants which, to the actual knowledge of Lessee, are under common ownership, more than any part or parts of the Property or Improvements having an aggregate floor area greater than 40,000 square feet or one full floor, without first obtaining Lessor's written approval of any such Sublease, which approval Lessor may in its sole discretion withhold. If Lessee shall contemplate making any Sublease with respect to which Lessor's approval is required pursuant to the foregoing

sentence, Lessee shall submit to Lessor a copy of such proposed Sublease together with any information concerning the identity and financial worth of the Subtenant as Lessor may reasonably request. Within thirty (30) days after submission of such proposed Sublease and information, Lessor shall notify Lessee whether the proposed Sublease is approved and if the same is not approved the reasons for such disapproval. In the event Lessor shall fail to so respond within thirty (30) days after submission of such Sublease and information, the same shall be conclusively deemed to have been approved by Lessor.

Section 14.09. City Lease. Lessor represents and warrants to the Lessee that immediately prior to the execution and delivery of this Lease, the City and Lessor have executed and delivered the "City Lease", by which the City, as lessor, has demised to the Lessor, as lessee, portions of the Property now owned by the City, as more particularly described in the City Lease. Lessee hereby acknowledges that it has received a true and correct copy of the City Lease at or prior to the execution of this Lease. Lessor covenants and agrees that, promptly upon the written request of Lessee, Lessor will cause the City to enter into an agreement with Lessor and Lessee providing that in the event of a termination of the City Lease, the possession of Lessee under the terms of this Lease shall not be disturbed so long as an Event of Default shall not

occur hereunder and that, following any such termination of the City Lease, the City shall assume and agree to be bound by all of the obligations of the Lessor hereunder if Lessee shall agree that, upon request of the City following a termination of the City Lease, Lessee will attorn to the City and will execute and deliver such instruments as the City shall reasonably request to confirm such attornment.

In connection with the City Lease, Lessor further covenants and agrees that:

- (a) Lessor will not enter into any amendment of the City Lease or enter into any other agreement with the City which might alter the rights or obligations of Lessee under this Lease without first obtaining the consent of Lessee.
- (b) Lessor will punctually perform all obligations to be performed by the Lessee under the City Lease and, at the request of Lessee, will promptly cure any default by the Lessee under the City Lease.
- (c) Lessor will not permit the City Lease to be terminated for so long as this Lease is in effect.
- (d) Lessor shall, upon the request of Lessee:
 - (i) diligently enforce the rights and remedies

available to the Lessee under the City Lease; and

(ii) require diligent and prompt performance by the City under the City Lease of all of the obligations of the City under the City Lease.

(e) Lessor shall promptly send to Lessee a copy of any notice of default under the City Lease.

(f) Lessor will cause the City to execute, acknowledge and deliver certificates as required by Section 18.03 hereof.

Section 14.10. Nondisturbance. Lessor shall from time to time, promptly upon request of Lessee, (i) enter into agreements with Lessee and one or more Subtenants, and (ii) cause the City, as lessor under the City Lease, to enter into agreements with Lessee and one or more Subtenants, which agreements shall provide that in the event of a termination of the City Lease or of this Lease or both, the possession of such Subtenants shall not be disturbed so long as such Subtenants shall agree that, upon request of the City or the Lessor following a termination of this Lease or of both this Lease and the City Lease (as the case may be), such Subtenants will attorn to the party requesting same and will execute and deliver such instrument as the party requesting such attornment may require in order to confirm such attornment. Notwithstanding the foregoing, Lessor shall not be required to recognize, or

to cause the City to recognize, the nondisturbance rights of any Subtenant under a Sublease providing for a term of more than fifteen (15) years, including extensions and renewals, unless such Sublease has been approved by Lessor. Any Sublease submitted to Lessor for approval shall be deemed approved unless, within thirty (30) days after such a submission, Lessor shall have given written notice to Lessee of the disapproval of such Sublease, which notice shall specify the reasons for such disapproval.

Section 14.11. Attornment. In the event of a termination of this Lease or of both this Lease and the City Lease, each Subtenant under a Sublease with Lessee shall attorn to Lessor or the City (as the case may be) unless Lessor or the City (as the case may be) shall elect to dispossess such Subtenant. Lessee covenants that each Sublease hereafter executed shall contain a clause expressly providing that the Subtenant thereunder shall attorn to Lessor or the City (as the case may be) in the event of a termination of this Lease or of this Lease and the City Lease, but the absence of such a clause from any Sublease shall not relieve the Subtenant from the provisions of this Section 14.11. Nothing in this Section 14.11, however, shall affect the rights of a Subtenant under a nondisturbance agreement executed pursuant to Section 14.11.

ARTICLE XV

Deposit; Default

Section 15.01. Deposit. Lessor hereby acknowledges the receipt of a good faith deposit, to be retained by Lessor except as hereinafter provided, in the amount of \$100,000 (hereinafter called the "Deposit"). Lessor shall be under no obligation to pay or earn interest on the Deposit, and any interest earned on such deposit shall be the property of Lessor. Except as otherwise herein provided, the Deposit shall be returned to Lessee within ten (10) days after the issuance by Lessor of [the Certificate of Final Completion.] Certificates of Final Completion for the Quincy Market Phase and all of the other Phases, if any, as to which Lessee shall become obligated to complete the Rehabilitation.*

Section 15.02. Events of Default. Any of the following occurrences or acts shall constitute an "Event of Default" under this Lease:

- (a) if Lessee at any time during the Term (and regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings, in law, in equity or before any administrative tribunal which have or might have the effect of preventing Lessee from complying with the terms of this Lease) shall fail (i) to make payment of any installment of Rent,

*First Amendment to Lease, Paragraph 32

additional rent or of any other sum herein specified to be paid by Lessee, or (ii) to observe or perform any of Lessee's other covenants, agreements or obligations hereunder; and if any such default shall not be cured as to any default referred to in clause (i) within ten (10) days after receipt of written or telegraphic notice thereof by Lessee or as to any default referred to in clause (ii) within thirty (30) days after Lessor shall have given to Lessee written notice specifying such default (or, in the case of any default referred to in clause (ii) which cannot with diligence be cured within such thirty (30) day period, if Lessee shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default with diligence, it being intended, in connection with a default not susceptible of being cured with diligence within such thirty (30) day period, that the time within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with diligence);

- (b) if Lessee shall file a petition in bankruptcy or for reorganization or for any arrangement pursuant to any present or future federal bankruptcy act

or under any similar federal or state law, or shall be adjudicated a bankrupt or insolvent or shall make an assignment for the benefit of its creditors or shall admit in writing its inability to pay its debts generally as they become due, or if a petition or answer proposing the adjudication of Lessee as a bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within sixty (60) days after the filing thereof;

- (c) if a receiver, trustee or liquidator of Lessee or of all or substantially all of the property of Lessee or of the Property shall be appointed in any proceeding brought by Lessee, or if any such receiver, trustee or liquidator shall be appointed in any proceeding brought against Lessee and if such receiver, trustee or liquidator shall not be discharged within sixty (60) days after such appointment, or if Lessee shall acquiesce in or consent to such appointment;
- (d) subject to Section 13.12 of this Lease, if, at any time during the Rehabilitation, the Property shall remain substantially unattended for a period

of sixty (60) consecutive days or if, at any time following issuance of the Certificate of Final Completion, the Property shall remain substantially unoccupied or unattended for a period of sixty (60) consecutive days;

(e) if Lessee shall be liquidated or dissolved or shall begin proceedings toward its liquidation or dissolution;

(f) if Lessee shall fail:

- (i) to timely pay any Tax Payments when due; or
- (ii) to observe or perform any of Lessee's other covenants, agreements or obligations under any agreement with the City relating to Tax Payments,

and if such default shall not be cured as to any default referred to in clause (i) within ten (10) days after receipt of written or telegraphic notice thereof by Lessee or as to any default referred to in clause (ii) within thirty (30) days after Lessor shall have given to Lessee written notice specifying such default (or, in the case of any default referred to in clause (ii) which cannot with diligence be cured within such thirty (30) day period, if Lessee shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default with diligence, it

being intended, in connection with a default not susceptible of being cured with diligence within such thirty (30) day period, that the time of Lessee within which to cure the same shall be extended for such period as may be necessary to complete the curing of same with diligence); and

(g) if a Leasehold Mortgagee who has acquired title to Lessee's leasehold estate makes a Transfer prohibited by Section 14.03.

Section 15.03. Remedies in Event of Default. If an Event of Default shall have happened and be continuing, Lessor shall have the right, at its election, then or at any time thereafter while any such Event of Default shall continue, to give Lessee notice of Lessor's intention either (i) to terminate the Term of this Lease or (ii) to reenter and take possession of the Property on a date specified in such notice, which date shall not be less than ten (10) days after the date of giving of such notice, and on the date specified in any such notice Lessee's right to possession of the Property shall cease and Lessee shall peaceably and quietly yield to and surrender to Lessor the Property, and if Lessor shall have given notice of its intention to terminate the Term of this Lease, the Term of this Lease shall thereupon be terminated. In the event such notice is given, Lessor shall have the immediate right of reentry and possession of the Property and the right (subject to the rights of Subtenants under nondis-

turbance agreements executed pursuant to Section 14.10) to remove all persons and property therefrom. Should Lessor elect to recenter as herein provided or should Lessor take possession pursuant to legal proceedings or pursuant to any notice provided for by law, Lessor may thereafter either terminate the Term of this Lease or from time to time, without terminating the Term of this Lease, relet the Property or any part thereof for such term or terms and at such rental or rentals and upon such terms and conditions as Lessor may deem advisable, with the right to make alterations and repairs to the Property. Lessor's rights under this Section 15.03 are expressly subject to the rights of Leasehold Mortgagees under Section 15.07.*

Section 15.04. Rights in Event of Termination. [In] Subject to the rights of Leasehold Mortgagees under Section 15.07, in** the event of any termination of the Term of this Lease as provided in Section 15.02 hereof or as otherwise permitted by law, Lessor may enter upon the Property, and again have, repossess and enjoy the same as if this Lease had not been made (subject to the rights of Subtenants under nondisturbance agreements executed pursuant to Section 14.10), and in any such event neither Lessee nor any person claiming through or under Lessee by virtue of any statute or of any order of any court shall be entitled to possession or to remain in possession of the Property but shall forthwith quit and surrender the same, and Lessor shall:

*First Amendment to Lease, Paragraph 33

**First Amendment to Lease, Paragraph 34

(a) at its option, and notwithstanding any other provisions of this Lease to the contrary, forthwith be entitled to recover from Lessee (in lieu of all other claims for damages on account of the termination of the Term of this Lease, including any amounts payable to Lessor by Lessee pursuant to the provisions of Section 15.05) as and for liquidated damages, an amount equal to the excess of all the Rent, additional rent and Tax Payments reserved hereunder or under any agreement with the City relating to taxes for the unexpired portion of the Term (in determining the Rent and Tax Payments which would be payable by Lessee Subsequent to such reentry, the Rent and Tax Payment for each year of the unexpired term of the Lease shall be equal to the average annual Rent and Tax Payment paid by Lessee from the Commencement Date to the time of the Event of Default, or during the preceding three Fiscal Years, whichever period is shorter) over the fair rental value of the Property for the unexpired portion of the Term, discounted at four percent (4%) per annum to present worth; or

- (b) if the termination occurs prior to the return of the Deposit pursuant to Section 15.01, retain the Deposit and any interest collected thereon as its own property as and for liquidated damages in lieu of all other claims for damages on account of the termination of the Lease, including, without limitation, any amounts payable to Lessor by Lessee pursuant to the provisions of Section 15.05; or
- (c) proceed with any rights or remedies available to it under law or equity.

Nothing herein contained shall, however, limit or prejudice the right of Lessor, in any bankruptcy or reorganization or insolvency proceedings, to prove for and obtain as liquidated damages by reason of such termination, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to, or less than the amount of the excess referred to above.

Section 15.05. Rights of Lessor in Event of Reentry.

If Lessor shall reenter and obtain possession of the Property by reason of or following any default of Lessee, whether or not the Term shall have been terminated, Lessor shall have the right, without notice, to repair or alter the Property in such manner as

Lessor may deem necessary or advisable so as to put the Property in good order and to make the same rentable, considering the use of the Property immediately prior thereto, and shall have the right, at Lessor's option, to relet the Property or any part thereof, and Lessee agrees to pay Lessor on demand all expenses incurred by Lessor in obtaining possession, and in repairing and putting the Property in good order and condition, and in reletting the same, including reasonable fees of attorneys, architects and agents, and also any other reasonable and legitimate expenses or commissions, and Lessee further agrees to pay Lessor, on the dates on which Rent would have been due as specified herein following such reentry until the end of the Term, the sum of money which would have been payable by Lessee as Rent, additional rent and Tax Payments, if Lessor had not reentered and resumed possession of the Property, deducting only the net amount of rent, additional rent, and Tax Payments, if any, which Lessor shall actually receive (after deducting from the gross receipts the expenses, costs and payments of every kind of Lessor which in accordance with the terms of this Lease would have been borne by Lessee) in the meantime from and by any reletting of the Property, and Lessee hereby agrees to be and remain liable for all sums aforesaid, as well as for any deficiency aforesaid, and Lessor shall have the right from time to time to begin and maintain successive actions or other legal proceedings against Lessee for the recovery of such deficiency or damages or for a sum equal to any installment or installments of Rent, and Tax Payments or additional rent

and to recover such sums upon the liability of Lessee herein provided, which liability it is expressly covenanted shall survive the issuance of any action to secure possession of the Property. In determining the Rent and Tax Payments which would be payable by Lessee subsequent to such reentry, the Rent and Tax Payment for each year of the unexpired term of this Lease shall be equal to the average annual Rent and Tax Payment paid by Lessee from the Commencement Date to the time of the Event of Default, or during the preceding three Fiscal Years, whichever period is shorter. Nothing herein contained shall be deemed to require Lessor to wait to begin such action or other legal proceedings until the date on which the Term would have expired if there had been no such default by Lessee. Lessor's rights under this Section 15.05 are expressly subject to the rights of Leasehold Mortgagees under Section 15.07.*

Section 15.06. No Termination. No such reentry or taking of possession of the Property by Lessor shall be construed as an election on Lessor's part to terminate the Term unless a written notice of such intention is given to Lessee or unless the termination hereof is decreed by a court of competent jurisdiction. The words "enter," "reenter" and "reentry" are not restricted to their technical legal meanings.

*First Amendment to Lease, Paragraph 35

[Section 15.07. Rights of Leasehold Mortgagees. Lessor agrees to accept performance and compliance by any Leasehold Mortgagee of and with any term, covenant, agreement, provision, condition or limitation on Lessee's part to be kept, observed or performed by Lessee. In case of the termination of this Lease by reason of the happening of any Event of Default, Lessor shall give notice thereof to any Leasehold Mortgagee which shall have notified Lessor of its name and address.

If the Event of Default specified in such notice is a default other than with respect to Rent or additional rent and if within thirty (30) days after the mailing of such notice such Leasehold Mortgagee shall commence and be proceeding with due diligence to cure the default specified in the notice, then if such Leasehold Mortgagee within said thirty day period shall pay or arrange to the reasonable satisfaction of Lessor for the payment of a sum of money equal to all Rent and additional rent payable by Lessee hereunder and the Tax Payments as of the date of such termination, in addition to all expenses, costs and fees, including reasonable attorneys' fees, incurred by Lessor in terminating this Lease and in acquiring possession of the Property, together with a sum of money equal to the amount which, but for such termination, would have become due and payable under this Lease from such termination date up to and including a period of sixty (60) days beyond the date of the mailing of such notice, less any net rentals or other income which the Lessor may have received from the Property since the date of the Event of Default giving rise to such termination

of this Lease, then Lessor and such Leasehold Mortgagee shall, upon the written request of such Leasehold Mortgagee made at any time within the first thirty (30) days of such sixty (60) day period, mutually execute and deliver within the last thirty (30) days of such sixty (60) day period a new lease of the Property for the remainder of the Term, with priority equal thereto, at the rent and upon the terms, covenants, agreements, provisions, conditions and limitations herein contained modified, however, mutatis mutandis to reflect the changed circumstances. At Lessee's request, Lessor will enter into an agreement with any Leasehold Mortgagee granting to the Leasehold Mortgagee the rights set forth in this Section 15.07.]

Section 15.07. Rights of Leasehold Mortgagees. A) Lessor agrees to accept performance and compliance by any Leasehold Mortgagee of and with any term, covenant, agreement, provision or limitation on Lessee's part to be kept, observed or performed by Lessee. B) Lessor agrees that following an Event of Default and the expiration of any period within which Lessee may cure such default, it will take no action to terminate the Term nor to re-enter and take possession of the Property unless it shall first give each Leasehold Mortgagee notice after the expiration of any such cure period specifying such Event of Default and stating Lessor's intention either to terminate the Term or to reenter and

take possession of the Property on a date specified in such notice. Notwithstanding such notice the Term shall not be terminated nor shall Lessor re-enter and take possession of the Property if (i) such Event of Default can be cured by the payment of a fixed monetary amount and within twenty (20) days after the date such notice is given any Leasehold Mortgagee shall make such payment, or (ii) such Event of Default can be cured with the exercise of reasonable diligence by a Leasehold Mortgagee after obtaining possession of the Property and a Leasehold Mortgagee, within thirty (30) days after the date such notice is given, commences such proceedings (including, without limitation, the filing of a petition for the appointment of a receiver) as it may deem necessary to obtain such possession and thereafter diligently prosecutes such action and promptly upon obtaining such possession commences (and thereafter diligently pursues) the curing of such default, or (iii) such Event of Default is not capable of being cured by a Leasehold Mortgagee, even if possession of the Property were obtained, and a Leasehold Mortgagee, within sixty (60) days after the date such notice is given, institutes foreclosure proceedings and thereafter prosecutes the same with diligence or acquires Lessee's interest in this Lease, and such Event of Default thereupon shall be deemed to have been waived. C) In the event of the termination of this Lease prior to its stated expiration date (other than by reason of voluntary termination by the Lessee or by reason of any termination pursuant to the provisions of Sections 12.01, 12.02, or 13.12) Lessor shall give all Leasehold Mortgagees

notice of such termination and shall enter into a new lease of the Property with a Leasehold Mortgagee or, at the request of such Leasehold Mortgagee, with an assignee, designee or nominee of such Leasehold Mortgagee for the remainder of the Term effective as of the date of such termination, at the Rent and upon the same covenants, agreements, terms, provisions and limitations as are herein contained, provided (1) such Leasehold Mortgagee makes written request upon Lessor for such new lease within thirty (30) days after the giving of such notice of termination and such written notice of termination and such written request is accompanied by payment to Lessor of all amounts then due to Lessor of which Lessor shall have given the Leasehold Mortgagee notice, (ii) such Leasehold Mortgagee pays or causes to be paid to Lessor at the time of the execution and delivery of such new lease any and all additional sums which would at the time of the execution and delivery thereof be due under this Lease but for such termination and pays or causes to be paid any and all expenses including reasonable counsel fees, court costs and costs and disbursements incurred by Lessor in connection with any such termination or in connection with the execution and delivery of such new lease and any conveyance of title to the Improvements, less the net income from the Property collected by Lessor subsequent to the date of the termination of this Lease and prior to the execution and delivery of such new lease, and (iii) such Leasehold Mortgagee agrees to cure, within thirty (30) days after the execution and delivery of

such new lease, all uncured Events of Default of which Lessor shall have given the Leasehold Mortgagee notice (except any Event of Default which is not capable of being cured by a Leasehold Mortgagee, even if possession of the Property were obtained, which Event of Default, if any, shall be deemed to have been waived), or if any such Event of Default cannot be cured within such period, such Leasehold Mortgagee agrees to commence, within such period, to cure such Event of Default and thereafter pursues the same with due diligence. If Lessor receives written requests in accordance with the provisions of this Section from more than one Leasehold Mortgagee, Lessor shall only be required to deliver the new lease to the Leasehold Mortgagee who is, among those Leasehold Mortgagees requesting a new lease, the holder of the most junior Leasehold Mortgage, provided that such Leasehold Mortgagee shall, not later than the execution of such new lease, pay in full the sums secured by all Leasehold Mortgages which are prior in lien to the Leasehold Mortgage held by such Leasehold Mortgagee. Any new lease made pursuant to this paragraph shall be prior to any mortgage or other lien, charge or encumbrance on the fee of the Property and shall have the same relative priority in time and in right as this Lease and shall have the benefit of all of the right, title, powers and privileges of the Lessee hereunder in and to the Property and the Improvements. At Lessee's request, Lessor will enter into an agreement with any Leasehold Mortgagee granting to the Leasehold Mortgagee the rights set forth in this Section 15.07. D) This Lease shall not be modified,

amended, surrendered, cancelled or wholly or partially terminated by Lessee, nor shall any waiver of Lessee's rights hereunder or any approval or consent of Lessee required hereunder be effective, without the written consent of each Leasehold Mortgagee whose name and address shall have been furnished to Lessor pursuant to Section 9.03.*

Section 15.08. Remedies Not Exclusive. No right or remedy herein conferred upon or reserved to Lessor or Lessee is intended to be exclusive of any other right or remedy, except as expressly stated herein, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter existing at law or in equity or by statute, except such rights or remedies as are expressly limited herein[.] (including, without limitation, the limitations on Lessor's rights expressed in Section 15.07).**

Section 15.09. Waiver of Rights of Redemption. Without prejudice to the rights of Leasehold Mortgagees under Section 15.07,*** Lessee hereby waives for itself and all those claiming under it all rights which it may have under any present or future constitution, statute or rule of law (i) to redeem the Property after termination of Lessee's right of occupancy by order or judgment of any court or by any legal process or writ or (ii) which exempts property from liability for debt or for distress for rent.

*First Amendment to Lease, Paragraph 36

**First Amendment to Lease, Paragraph 37

***First Amendment to Lease, Paragraph 38

- (b) the right to cure any such default, at Lessor's cost and expense, and to deduct the costs and expenses (including reasonable attorneys' fees) incurred by Lessee in effecting such cure, together with interest thereon at the same rate provided for in the last sentence of Section 6.01, from any one or more succeeding payments of Rent due hereunder;
- (c) the right to a writ of mandamus, injunction or other similar relief, available to it under Massachusetts law, against the Lessor (including any or all of the members of its governing body, and its officers, agents or representatives); or
- (d) the right to maintain any and all actions at law or suits in equity or other proper proceedings to enforce the curing or remedying of such default.

Section 15.11. Force Majeure. In the event performance of any of their respective covenants, agreements or obligations under this Lease by Lessor or Lessee is prevented, interrupted or delayed by causes beyond its control, including but not restricted to strike, lockout, action of labor unions, riots storm, flood, explosion, acts of God or of the public enemy, acts of government, acts of the other party prohibited by this Lease, war, invasion, insurrection, mob, violence, sabotage, malicious

Section 15.10. Defaults of Lessor. If Lessor at any time during the Term shall fail to observe or perform any of Lessor's covenants, agreements or obligations hereunder, and if any such default shall not be cured, as to any default resulting from the nonpayment of money, within ten (10) days after receipt of written or telegraphic notice thereof by Lessee or, as to any other default, within thirty (30) days after Lessee shall have given to Lessor written notice specifying such default (or, in the case of any default not resulting from the nonpayment of money which cannot with diligence be cured within such thirty (30) day period, if Lessor shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default with diligence, it being intended, in connection with a default not susceptible of being cured with diligence within such thirty (30) day period, that the time of Lessor within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with due diligence), then Lessee to the fullest extent permitted by law, shall have the right to elect and pursue any one of the following mutually exclusive remedies:

- (a) the right and option to terminate this Lease and all of its obligations hereunder by giving notice of election to the Lessor, whereupon this Lease shall terminate as of the date of such notice;

mischief, inability (notwithstanding good faith and diligent efforts) to procure, or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, fires, epidemics, quarantine restrictions, freight embargoes, unusually severe weather, inability (notwithstanding good faith and diligent efforts) to obtain governmental permits or approvals or delays of subcontractors due to such causes, and not caused by any act or failure to act by the party thereby delayed in such performance, the date or time or times for the performance of such covenant, agreement or obligation by Lessor or Lessee shall be postponed by the period of time during which such performance* is so prevented, interrupted or delayed and, in such case, neither Lessor nor Lessee shall be liable for any costs, losses, damages, injuries or liabilities caused to or suffered or incurred by Lessor or Lessee in connection with, or as the result of, any such delay in, or nonperformance of, such covenant, agreement or obligation. In the event that Lessor or Lessee intends to avail itself of the provisions of this Section 15.11, Lessor or Lessee shall give written notice of such intent to the other, such notice to be given not more than fifteen (15) days from the date performance of such covenant, agreement or obligations was so prevented, interrupted or delayed.

*First Amendment to Lease, Paragrah 39

ARTICLE XVI

Notices and Demands

Section 16.01. Notices. All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms hereof, shall be in writing, and shall be deemed to have been properly given if sent by registered or certified United States Mail, postage prepaid, return receipt requested, addressed, if intended for Lessor, to it at City Hall, Boston Massachusetts, Attention of the Director, and if intended for Lessee to it c/o The Rouse Company, Columbia, Maryland 21044, Attention of the Secretary. Lessor and Lessee shall, at any time and from time to time, have the right to specify as its proper address for purposes of this Lease any other address or addresses upon giving fifteen (15) days' written notice thereof to the other party.

Section 16.02. Additional Notices. Either party may, by written notice to the other, designate no more than three (3) additional persons or entities to whom or which copies of all notices pursuant to Section 16.01 shall be sent.

ARTICLE XVII

Indemnification

Section 17.01. Indemnification. Lessee shall pay, and protect, indemnify and save harmless Lessor from and against any and all liabilities, losses, damages, costs, expenses (including all reasonable attorneys' fees and expenses of Lessee and of Lessor), causes of action, suits, claims, demands or judgments of any nature whatsoever (except for those which result from the acts of Lessor) which may be imposed upon or incurred by or asserted against Lessor by reason of (i) any accident, injury to, or death of any person or any damage to property occurring on the Property or any part thereof (except as may result from the acts of Lessor) or (ii) any use, nonuse, condition, or occupation of the Property, or any part thereof, or resulting from the conditions thereof or of adjoining sidewalks, streets or ways, or (iii) any failure by Lessee to perform or comply with any of the terms hereof or of any contracts, agreements or restrictions, statutes, laws, ordinances or regulations affecting the Property or any part thereof or the ownership, occupancy or use thereof.

ARTICLE XVIII

Miscellaneous

Section 18.01. Durgin Park Parcel. Within forty-five (45) days after the Commencement Date, Lessor will cause each of the owners of the two parcels which are collectively known as the "Durgin Park Parcel", as so designated on Schedule A, to execute and deliver a Party Wall Declaration and Agreement in substantially the same form as Schedule L. Within forty-five (45) days after the delivery to Lessor of a Commencement Notice with respect to each of Phase IV and V, Lessor will cause the owners of the Durgin Park Parcel each to execute and deliver to Lessor a Rehabilitation Agreement in substantially the same form as Schedule M. At Lessee's request, Lessor shall execute and deliver to Lessee any instruments which Lessee shall deem to be reasonably necessary in order to assign to Lessee for the term hereof all of Lessor's right, title and interest in, to and under the aforesaid Party Wall Declarations and Agreements or Rehabilitation Agreements provided that Lessee shall have theretofore delivered to Lessor Commencement Notices with respect to Phase IV and V.

Section 18.02. Partial Termination. Notwithstanding any term or provision herein to the contrary, this Lease may be terminated in part in the following manner:

- (i) On or before April 15, 1977 Lessee may elect, from time to time, to terminate this Lease as to any one or more Phases with respect to which Lessee shall not theretofore have delivered a Commencement Notice to Lessor; and
- (ii) On April 15, 1976 Lessor may elect to terminate this Lease as to any one or more Phases with respect to which Lessee shall not theretofore have delivered a Commencement Notice to Lessor, but only if Lessee shall not theretofore have delivered to Lessor Commencement Notices with respect to at least three (3) Phases; and
- (iii) On April 16, 1977 this Lease shall automatically terminate as to all Phases with respect to which Lessee shall not theretofore have delivered a Commencement Notice to Lessor.

Any termination pursuant to clause (i) or (ii) above shall be effected by notice thereof given by the party having such election to the other party. Upon the giving of any such notice (or, in the case of any termination pursuant to clause (iii) above, on April 16, 1977) this Lease and the rights and obligations of the parties hereunder with respect to the Phase or Phases in question shall cease and terminate, except with respect to the obligations of the parties to execute and deliver

the party wall and easement agreements hereinafter mentioned and Lessee's obligations to discharge any liens created by it with respect to the Phase or Phases in question. In the event of such partial termination(s), the parties shall execute any and all instruments or other documents reasonably requested by either party to evidence such termination(s).

Upon any partial termination of this Lease pursuant to this Section 18.02 Lessor shall forthwith upon request of Lessee execute and deliver to Lessee: (a) a declaration and agreement in substantially the same form as Schedule G attached hereto, establishing mutual rights and obligations of the parties with respect to the maintenance and repairs of such party walls as shall exist between the Property and any Phase as to which this Lease has been terminated pursuant to this Section 18.02, and (b) if this Lease is terminated as to Phase IV, V, or VI, a deed and agreement in form reasonably satisfactory to Lessee, granting Lessee and its subtenants and its or their employees, agents and business invitees, an easement for the purpose of loading and unloading vehicles in those portions of former North Market Street as to which this Lease shall have been terminated[.] and (c) if this Lease is terminated as to Phase V, a deed and agreement in form reasonably satisfactory to Lessee, granting to Lessee, its successors and assigns, a perpetual, non-exclusive easement, for reasonable, peaceful and orderly pedestrian access and passage over and upon that portion of

former North Street lying within Phase V.*

Lessee acknowledges that following any such partial termination, Lessor may enter into leases or other agreements for the leasing and development of all or any part of the Property which has been the subject of a partial termination. In such event, any such subsequent development activities shall be undertaken with the least disruption to Lessee's enjoyment of the Property as may be feasible under the circumstances then existing.

Section 18.03. No Personal Liability. No member, official, or employees of Lessor shall have any personal interest, direct or indirect, in this Lease, nor shall any such member, official, or employee participate in any decision relating to this Lease which affects his personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official, or employee of Lessor shall be personally liable to Lessee, or any successor in interest, in the event of any default or breach by Lessor or for any amount which may become due to Lessee or successor or on any obligations under the terms of this Lease.

Section 13.04. Nondiscrimination. Lessee, for itself and its successors and assigns, agrees that during the Rehabilitation of the Property provided for in this Lease;

- (a) Lessee will not discriminate against any employee or applicant for employment because of race, color, sex, religion, or national origin. Lessee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, sex, religion, or national origin. Such action shall include, but not be limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by Lessor setting forth the provisions of this nondiscrimination clause.
- (b) Lessee will, in all solicitations or advertisements for employees placed by or on behalf of Lessee, state that all qualified applicants will receive consideration for employment without regard to race, color, sex, religion, or national origin.
- (c) Lessee will send to each labor union or representative of workers with which Lessee has a collective

bargaining agreement or other contract or understanding, a notice, to be provided, advising the labor union or workers' representative of Lessee's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (d) Lessee will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (e) Lessee will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor or the Secretary of Housing and Urban Development pursuant thereto, and will permit access to the Lessee's books, records, and accounts by the Lessor, the Secretary of Housing and Urban Development, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules and orders.

- (f) In the event that Lessee fails to comply with the nondiscrimination clauses of this Section 18.04 or with any of the said rules, regulations, or orders, this Lease may be cancelled, terminated or suspended in whole or in part and Lessee may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (g) Lessee will include the provisions of paragraphs (a) through (g) of this paragraph in every contract (including without limitation, all Subleases) or purchase order, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, unless exempted by rules, regulations or orders of the Secretary

of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, so that such provisions will be binding upon each such contractor, subcontractor, or vendor, as the case may be. Lessee will take such action with respect to any construction contract, subcontract, or purchase order as Lessor or H.U.D. may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided, however, that in the event Lessee becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Lessor or H.U.D., Lessee may request the United States to enter into such litigation to protect the interests of the United States. For the purposes of including such provisions in any construction contract, subcontract, or purchase order, as required hereby, the first three lines of this Section shall be changed to read "During the performance of this Contract, the Contractor agrees as follows:" and the term "Lessee" shall be changed to "Contractor" or such other term as may in the context be appropriate.

(h) If at any time the Director of the Boston Redevelopment Authority (hereinafter called the "Director") shall find that Lessee has failed to comply with the requirements of the Lessor's "Equal Opportunity Compliance Policy" and the provisions of this Section 18.04 the Director shall issue notice of such finding, setting forth the reasons therefor. Said notice shall be sent by registered mail, return receipt requested, to Lessee. Lessee shall have the right to appeal such finding to Lessor within thirty (30) days after receipt by Lessor of written notice of Lessee's intention to appeal said finding, or at the next regular meeting of Lessor, whichever is later, Lessor shall hear such appeal at a public meeting.

Upon the failure of Lessee to appeal the findings of the Director, or upon a determination by Lessor subsequent to any appeal, that Lessee has failed to comply with the requirements of the Lessor's "Equal Opportunity Compliance Policy" and the provisions of Subsection 10.06(b) hereof and this Section 13.04, Lessor shall have the right to retain the Deposit as full liquidated damages, but not as penalty, without any deduction or offset whatsoever.

Upon the failure of Lessee to appeal the finding of the Director, or upon the determination by Lessor, subsequent to an appeal of the finding, that the Lessee has failed to comply with the requirements of the Lessor's "Equal Opportunity Compliance Policy" and the terms and provisions of Subsection 10.06(b)

hereof and this Section 18.03, the Director shall send a notice of his finding and any other findings of Lessor related thereto to the following:

- (a) Secretary, Department of Housing and Urban Development;
- (b) Regional Administrator, Department of Housing and Urban Development;
- (c) Commissioner, Federal Housing Administration;
- (d) Director, Boston Office, Federal Housing Administration;
- (e) Massachusetts Committee Against Discrimination in Housing;
- (f) Association of General Contractors;
- (g) The Building Trades Council;
- (h) Mayor, City of Boston;
- (i) Any Leasehold Mortgagee; and
- (j) Such other interested parties as the Director may deem appropriate.

Section 18.05. Estoppel Certificates. Lessor and Lessee shall at any time and from time to time, within ten (10) days after written request by the other, execute, acknowledge and deliver to the party which has requested the same or to any prospective Leasehold Mortgagee, assignee or Subtenant designated by Lessee a certificate stating that (i) the Lease is in

full force and effect and has not been modified, supplemented or amended in any way, or, if there have been modifications, the Lease is in full force and effect as modified, identifying such modification agreement, and if the Lease is not in force and effect, the certificate shall so state; (ii) the Lease as modified represents the entire agreement between the parties as to this leasing, or, if it does not, the certificate shall so state; (iii) the dates on which the Term of this Lease commenced and will terminate; (iv) all conditions under the Lease to be performed by Lessor or Lessee, as the case may be, have been satisfied and, as of the date of such certificate, there are no existing defenses or offsets which the Lessor or Lessee, as the case may be, has against the enforcement of the Lease by other party, or, if such conditions have not been satisfied or if there are any defenses or offsets, the certificate shall so state; and (v) the Rent due and payable for the year in which such certificate is delivered has been paid in full, or, if it has not been paid, the certificate shall so state. After issuance of any such certificate, the issuer shall be estopped from denying the veracity or accuracy of the same.

Lessor shall at any time and from time to time, within ten (10) days of a written request therefor by Lessee, cause the City to execute, acknowledge and deliver to any of the parties mentioned above a certificate disclosing all the matters described above with respect to the City Lease and the obli-

gations of Lessor thereunder, which certificates shall have the same force and effect as certificates issued by Lessor with respect to this Lease pursuant to this Section 18.05.

Section 18.06. Headings. The headings of the various Articles and Sections of this Lease have been inserted for convenient reference only and shall not in any manner be construed as modifying, amending or affecting in any way the express terms and provisions hereof.

Section 18.07. Consents. Except as herein otherwise provided, whenever in this Lease the consent or approval of Lessor or Lessee is required, such consent or approval shall not be unreasonably delayed or withheld, and shall be in writing, signed by an officer or agent thereunto duly authorized, of the party granting such consent or giving such approval.

Section 18.08. Recording. This Lease, and any modifications thereof or additions thereto, shall be duly recorded by the Lessee among the land records of the Suffolk County Registry of Deeds, and the costs of such recordation and of any and all Federal revenue stamps which legally must be attached to any of said papers shall be paid by Lessee.

Section 18.09. Merger. There shall be no merger of this Lease or of the leasehold estate hereby created with the fee estate in the Property or any part thereof by reason of the fact that the same person may acquire or hold, directly or indirectly, this Lease or the leasehold estate hereby created or any interest

in this Lease or in such leasehold estate as well as the fee estate in the Property or any interest in such fee estate.

Section 18.10. Surrender. Upon the expiration or earlier termination of this Lease, Lessee shall peaceably leave and surrender the Property to Lessor in the same condition in which the Property was originally received from Lessor at the commencement of this Lease, except as repaired, rebuilt, restored, altered, or added to as permitted or required by any provision of this Lease and except for ordinary wear and tear. Lessee shall remove from the Property on or prior to such expiration or earlier termination all property situated therein which is not owned by Lessor, and, at its expense, shall, on or prior to such expiration or earlier termination, repair any damage caused by such removal. Property not so removed shall become the property of the Lessor, and Lessor may thereafter cause such property to be removed from the Property and disposed of, but the cost of any such removal and disposition and the cost of repairing any damage caused by such removal shall be borne by Lessee.

Section 18.11. Covenants Separate and Independent. Each and every covenant and agreement contained in this Lease is, and shall be construed to be, a separate and independent covenant and agreement, and the breach of any such covenant or agreement by either party shall not discharge or relieve the other party from its obligations to perform the same. If any term or provision of this Lease or the application thereof to any person or

circumstances shall to any extent be invalid and unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and shall be enforced to the extent permitted by law.

Section 18.12. Effect of Covenants. All of the covenants, conditions and obligations contained in this Lease shall be binding upon and inure to the benefit of the respective successors and assigns of Lessor and Lessee to the same extent as if each such successor and assign were in each case named as a party to this Lease[.] ; provided, however, that no person, corporation or other legal entity acquiring any of the right, title, or interest of Lessee in and to the leasehold estate in the Property shall be personally liable under this Lease with respect to any matter arising prior or subsequent to the period of such person's, corporation's or other legal entity's actual ownership of such right, title or interest (ot being understood, however, that the absence of any such liability for such matters shall not impair, impede or prejudice any other right or remedy available to Lessor for default by Lessee)* Subject to the provisions of Section 9.05, any person, corporation or other legal entity acquiring any or all of the rights, title and interest of Lessee in and to the leasehold estate in the Property (i) under any judicial sale made

*First Amendment to Lease, Paragraph 41

under a Leasehold Mortgage permitted by this Lease or as the result of any action or remedy provided therein, (ii) by foreclosure proceeding or action in lieu thereof, in connection with any such Leasehold Mortgage, or (iii) as a result of any legal process or proceedings (other than eminent domain proceedings by public authority), shall thereby become liable and be fully bound by all of the provisions of this Lease.

Section 18.13. No Partnership. Nothing herein shall be deemed or construed by the parties hereto or by any third party as creating or authorizing the creation of any partnership or joint venture between Lessor and Lessee, it being understood and agreed that no provision of this Lease, nor any act of Lessor or Lessee hereafter, shall be deemed to create any relationship between Lessor and Lessee other than the relationship of landlord and tenant.

Section 18.14. Modification. This Lease may not be modified or amended except by a writing signed by Lessor and Lessee.

Section 18.15. Governing Law. This Lease shall be governed by and construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the undersigned Boston Redevelopment Authority and Faneuil Hall Marketplace, Inc. have executed this Lease as of the date and year first above written.

ATTEST:

BOSTON REDEVELOPMENT AUTHORITY

By _____

ATTEST:

FANEUIL HALL MARKETPLACE, INC.

By _____

GUARANTY

The Rouse Company (hereinafter called "Rouse") as a joint and several obligor and not as a surety, hereby unconditionally guarantees the payment of all sums to be paid by Lessee under this Lease which become due or which become payable prior to the issuance of the Certificate of Final Completion, and the prompt performance by Lessee of all the terms, conditions, covenants and agreements of this Lease which are required to be performed or completed on or before the date of issuance of the Certificate of Final Completion.

Rouse promises to pay on demand all of Lessor's expenses, including court costs and reasonable attorney's fees, incurred by Lessor in enforcing the obligations of Lessee under this Lease or in enforcing this Guaranty. Any assignment or assignments and any subletting or sublettings by Lessee or Lessee's assigns or sublessees, of this Lease, made with or without notice to Lessee, or the Lessor's forbearance or delay in enforcing or exercising any claims, rights or remedies of any kind against Lessee, or any other reason, whether similar to or different from the foregoing, shall in no way affect, impair, discharge, or release, in whole or in part, Rouse from its liability as Guarantor. The obligation of Rouse under this Guaranty is a primary and unconditional obligation, and Lessor

may at its option proceed against Rouse in the first instance to collect any payment due under this Lease or enforce any of the terms, conditions, covenants, or agreements of this Lease without first proceeding against Lessee or any other person, firm, or coporation, and should Lessor so proceed, Rouse promises to pay on demand all of Lessor's expenses, including court costs and reasonable attorney's fees, as aforesaid.

The obligations, covenants, agreements, and duties of Rouse under this Guaranty shall in no way be affected, impaired, discharged, or released, in whole or in part, or the amount of recovery limited, by reason of the happening at any time of the voluntary or involuntary liquidation, dissolution, sale of all or substantially all of the assets, marshalling of assets and liabilities, receivership, conservatorship, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustments of Lessee or any other similar proceeding affecting Lessee, or the disaffirmance, rejection, rescission, or avoidance of this Lease arising out of any such proceeding aforesaid, it being the purpose and intent of Rouse that this Guaranty and the obligations of the Guarantor hereunder shall be absolute and unconditional under any and all circumstances, and shall not be discharged except by payment and performance as herein provided, and then only to the extent of such payment or performance.

Rouse hereby waives notice of acceptance of this Guaranty and waives any notice of Lessee's nonpayment or nonperformance of any terms, conditions, covenants, or agreements of this Lease.

Rouse acknowledges the provisions of Article XIV of this Lease and agrees not to make any Transfer other than as permitted by Article XIV.

Rouse hereby consents to jurisdiction of the courts of the Commonwealth of Massachusetts in actions in which Rouse may be a party and which are alleged to arise under this Guaranty, but not for any other purpose or any other transaction. Rouse appoints Phil David Fine, Esquire, of 1 State Street, Boston, Massachusetts (or such other person or persons residing or having a place of business in the Commonwealth of Massachusetts whom Rouse may designate from time to time by notice to Lessor given in accordance with the provisions of Article XVI of the Lease) as its agent and attorney upon whom service of process may be made in any action to which Rouse may be a party which is alleged to arise under this Guaranty, and service of process on said Phil David Fine, Esquire (or such other designee of Rouse) shall be taken as personal service of process upon Rouse.

ATTEST:

THE ROUSE COMPANY

BY _____

COMMONWEALTH OF MASSACHUSETTS

County of Suffolk

On this 21st day of February, 1975, before me appeared Roy E. Williams, the Vice-President of The Rouse Company, who being by me duly sworn, acknowledge the foregoing Guaranty to be the free act and deed of said Corporation.

Notary Public

My commission expires:

8/26/76

Composite copy showing amendments
made by First Amendment to City Lease
and Second Amendment to City Lease,
both dated as of September 26, 1975

INDENTURE OF LEASE

DATED AS OF FEBRUARY 21, 1975

BETWEEN

CITY OF BOSTON

AND

BOSTON REDEVELOPMENT AUTHORITY

Note: Brackets indicate material deleted by Amendment.
Underscoring indicates material added by Amendment.

INDENTURE OF LEASE

INDENTURE OF LEASE (hereinafter called "City Lease") made and entered into as of February 21, 1975, by and between the CITY OF BOSTON, a municipal corporation located in the Commonwealth of Massachusetts, as Lessor, (hereinafter called the "City") and the BOSTON REDEVELOPMENT AUTHORITY, a public body, politic and corporate, organized under the laws of the Commonwealth of Massachusetts, as Lessee, (hereinafter together with any successors or assigns permitted or authorized by this Lease called the "Authority").

WITNESSETH:

WHEREAS, with the assistance of the federal, state and city governments, the Authority is carrying out the Waterfront and Government Center Urban Renewal Projects pursuant to:

- (a) the Downtown-Waterfront-Faneuil Hall Urban Renewal Plan dated April 15, 1964, approved by the City Council of the City (hereinafter called the "City Council") on June 8, 1964, and by the Mayor of the City on June 11, 1964, and recorded at the Suffolk Registry of Deeds in Book 7948, Page 527, as amended by an amendment thereto dated April 8, 1965; and
- (b) the Government Center Urban Renewal Plan dated April 3, 1963, approved by the City Council on May 25, 1964, and recorded at the Suffolk Registry of Deeds in Book 8250, Page 187, as amended by an amendment thereto dated May 29, 1964,

(both plans hereinafter, as amended, and as they may from time to time be amended, called the "Plan"); and

WHEREAS, the Plan permits the renovation and restoration of North Market Building, South Market Building and Quincy Market Building, together with certain streets; and

WHEREAS, pursuant to the Plan, the Authority has acquired North Market Building and South Market Building by exercise of the power of eminent domain; and

WHEREAS, pursuant to this City Lease, the Authority is leasing Quincy Market Building and portions of North Market Street and South Market Street from the City; and

WHEREAS, the Authority and Faneuil Hall Marketplace, Inc. (hereinafter called "Faneuil"), subject to the fulfillment of certain conditions, intend to enter into the Indenture of Lease attached hereto as Exhibit I (which Indenture of Lease or any sublease entered into pursuant to Section 4.01 hereof is hereinafter called the "Markets Lease").

NOW, THEREFORE, in consideration of the mutual promises herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Authority hereby agree as follows:

ARTICLE I

Lease of City Property

Section 1.01 The City, for and in consideration of the rents, covenants and agreements hereinafter reserved, mentioned and contained on the part of the Authority to be paid, kept,

observed and performed, has leased, rented, let and demised, and by these presents does lease, rent, let and demise unto the Authority, and the Authority does hereby take and hire, upon and subject to the conditions and limitations hereinafter expressed, the "City Property" (as defined in Section 2.01 hereof), to have and to hold the City Property, subject as aforesaid, and subject to the terms, covenants, agreements and provisions hereof, unto Lessee for the uses and purposes described in Article IV of the Markets Lease for the "Term" (as defined in Section 6.01 hereof).*

* Certain additional property was demised to the Authority pursuant to Paragraph 1 of the Second Amendment to City Lease, which reads in part as follows:

"The City, for and in consideration of the sum of One Dollar (\$1.00) to it in hand paid, receipt of which is hereby acknowledged, and for and in consideration of the rents, covenants and agreements hereinafter reserved, mentioned and contained on the part of the Authority to be paid, kept, observed and performed, has leased, rented, let and demised, and by these presents does lease, rent and demise unto the Authority, and the Authority does hereby take and hire, upon and subject to the conditions and limitations expressed in the City Lease, that certain property described as Parcel III in Exhibit II attached hereto, to have and to hold the same, subject as aforesaid and subject to the terms, covenants, agreements and provisions of the City Lease, unto the Authority for the use and purposes described in Article IV of the Markets Lease for the 'Term.'"

ARTICLE II

Definitions

Section 2.01 The term "City Property" shall mean the parcels of land described in Exhibit II, * attached hereto and hereby made a part hereof, and shown on Exhibit III * attached hereto and hereby made a part hereof, and all improvements, fixtures, appurtenances and easements, and all alterations, replacements, additions and substitutions therefor, now or hereafter located thereon.

Section 2.02 The term "Markets Lessor" shall mean the Lessor under the Markets Lease.

Section 2.03 The term "Markets Lessee" shall mean the Lessee under the Markets Lease.

Section 2.04 The term "Sublease" shall mean a sublease between the Markets Lessee and a "Subtenant" (as defined in Section 2.05 hereof) of any individual parts, floors or areas of the City Property which the Markets Lessee is permitted to sublet pursuant to the Markets Lease.

Section 2.05 The term "Subtenant" shall mean any person, firm, corporation or other legal entity occupying any part of the City Property under a Sublease.

* Revised versions of Exhibits II and III were substituted for the original versions thereof by Paragraph 1 of the Second Amendment to City Lease. Only the revised versions of these Exhibits are attached hereto.

Section 2.06 The term "Rehabilitation" shall mean the restoration and renovation of the City Property pursuant to Article X of the Markets Lease.

Section 2.07 The term "Commencement Date" shall mean the date hereof.

Section 2.08 The term "Improvements" shall mean all improvements constructed, restored, or renovated by the Markets Lessee on the City Property pursuant to Article X of the Markets Lease, including those which are part of the City Property as of the date hereof.

Section 2.09 The following terms shall have the same meanings as are set forth in the Markets Lease: Leasehold Mortgage (Section 2.16 of the Markets Lease); Leasehold Mortgagee (Section 2.17 of the Markets Lease); Taking (Section 2.25 of the Markets Lease).

ARTICLE III

Title and Condition of City Property

Section 3.01 The City Property is subject to:

- (a) the existing state of title thereof as of the Commencement Date;
- (b) any state of facts which an accurate survey or physical inspection thereof might show;
- (c) all zoning regulations, restrictions, rules and ordinances, building restrictions and other laws and regulations now in effect or

hereafter adopted by any governmental authority having jurisdiction; and

- (d) the physical condition of buildings, structures and other improvements, and any fixtures, located on the City Property as of the Commencement Date, without representation or warranty of any kind by the City.

ARTICLE IV

The Markets Lease; Assignment and Subletting

Section 4.01 The Authority may enter into the Markets Lease or a sublease of the City Property which is in substantially the same form as the Markets Lease.

Section 4.02 At any time, and from time to time, prior or subsequent to entering into the Markets Lease, the Authority and the Markets Lessee may make changes, modifications or amendments to the Markets Lease which are not material. Prior to the making of any material changes, modifications or amendments, the Authority shall submit to the Corporation Counsel of the City, for his or her review and approval, any such changes, modifications or amendments.*

* The Corporation Counsel's approval of the First Amendment to Lease, dated September 26, 1976, amending the Markets Lease in certain respects, was acknowledged by the City in the First Amendment to City Lease, Paragraph 1. The Corporation Counsel's approval of the Second Amendment to Lease, dated September 26, 1976, amending the Markets Lease in certain respects, was acknowledged by the City in the Second Amendment to City Lease, Paragraph 2.

Section 4.03 The Authority shall, upon the request of the City:

- (a) diligently enforce the rights and remedies available to it under the Markets Lease; and
- (b) require diligent and prompt performance by the Markets Lessee of all of the obligations of the Markets Lessee relating to the City Property under the Markets Lease.

Section 4.04 The Authority shall perform the obligations required to be performed by the Markets Lessor under the Markets Lease.

Section 4.05 The City acknowledges, and shall recognize, the rights of the Markets Lessor and the Markets Lessee under the Markets Lease with respect to assignment, subletting, mortgaging and transfer.

Section 4.06 Except as provided in this Article IV, the Authority shall not assign or sublet its leasehold interest in the City Property.

ARTICLE V

Quiet Enjoyment

Section 5.01 The City represents and warrants that it has the right, power and authority to enter into this City Lease and that the Authority, upon paying the Rent (as defined in Section 7.01 hereof) and additional rents reserved herein and observing and keeping the covenants, agreements and

stipulations of this City Lease on the Authority's part to be paid, observed and kept, shall lawfully, peaceably and quietly hold, occupy and enjoy the City Property during the Term, without hindrance, ejection or molestation by the City or any person or persons claiming under the City; provided, that the Authority shall have the right to terminate this Lease or to seek a rent abatement for a material breach of this covenant. The City and its agents may enter and examine the City Property at all reasonable times for the purpose of determining whether the Authority is in compliance with the terms hereof.

ARTICLE VI

Term of Lease

Section 6.01 The term of this Lease (hereinafter called the "Term") shall be the period commencing on the date hereof and ending at midnight on [the date which is ninety-nine years after the commencement date of the Markets Lease] February 21, 2074* or on that date resulting from an earlier termination as hereinafter provided.

ARTICLE VII

Rent

Section 7.01 The Authority covenants to pay the City, at the City's address for notice set forth in Section 13.01

* Second Amendment to City Lease, Paragraph 3

hereof or at such other place or to such person as the City from time to time may designate in writing by notice to the Authority, in such coin or currency of the United States as shall at the time of payment be legal tender for the payment of all debts, public or private, as rent (hereinafter called the "Rent") for the City Property, commencing on the Commencement Date and thereafter throughout the Term, an annual rental equal to One Dollar (\$1.00).

Rent shall be payable in advance on the Commencement Date and on the first day of each calendar year thereafter.

Section 7.02 This City Lease is a net lease and the Rent, additional rent and all other sums payable hereunder to or on behalf of the City, shall be paid without notice or demand, and without set-off, counterclaim, abatement, suspension, deferments, deduction or defense except as otherwise expressly herein provided.

Section 7.03 Except as otherwise expressly herein provided, this City Lease shall not terminate, nor shall the Authority have the right to terminate this City Lease or be entitled to the abatement of any rent hereunder or any reduction or allocation thereof, nor shall the obligations of the Authority under this City Lease

be otherwise affected, by reason of any damage to or the destruction of all or any part of the City Property from whatever cause, or the taking of the City Property or any portion thereof by condemnation, requisition or otherwise for any reason whatever, or the prohibition, limitation or restriction of the Authority's use of all or any part of the City Property from whatever cause, or the interference with such use by any person, or by reason of any eviction by paramount title or otherwise, (subject, however, to the provisions of Section 5.01 hereof) or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of parties hereto that the obligations of the Authority hereunder shall be separate and independent covenants and agreements, that the Rent, additional rent and all other sums payable by the Authority hereunder shall continue to be payable in all events, and that the obligations of the Authority hereunder shall continue unaffected, unless the requirement to pay or perform the same shall have been terminated pursuant to an express provision of this City Lease.

ARTICLE VIII

Compliance with Laws and Regulations

Section 8.01 The Authority shall, at its sole cost and expense, comply with and shall cause the City Property and the Markets Lessee to comply with (i) all federal, state, county, municipal and other governmental statutes, laws, rules, orders,

regulations and ordinances affecting the City Property or any part thereof, or the use thereof, including those which require the making of any structural, unforeseen or extraordinary changes, whether or not any such statutes, laws, rules, orders, regulations or ordinances which may be hereafter enacted involve a change of policy on the part of the governmental body enacting the same, and (ii) all rules, orders and regulations of the National Board of Fire Underwriters or other bodies exercising similar functions in connection with the prevention of fire or the correction of hazardous conditions, which apply to the Property. The Authority shall comply or cause the Markets Lessee to comply with each and every requirement of all policies of public liability, fire and other insurance which at any time may be in force with respect to the City Property.

Section 8.02 Nothing herein shall limit the right of the Authority to contest the validity or enforceability of any statute, law, rule, order, regulation or ordinance with which the Authority may be requested to comply hereunder.

Section 8.03 The City and the Authority acknowledge the existence of Chapter 188 of the Massachusetts Acts and Resolves of 1970 and agree to abide by the provisions thereof. If the pushcart market and fruit and produce vendors referred to therein are displaced from their present location on Blackstone Street

between North Street and Hanover Street and the City provides for the nonexclusive use by such vendors of portions of South Market Street and North Market Street, included within the City Property, then, in that event, the City shall provide, at its expense, clean-up and maintenance services presently furnished to such vendors by the City. Any relocation of such vendors to South Market Street and North Market Street shall, to the extent reasonably practicable, be without interference to Improvements constructed on the City Property.

ARTICLE IX

Ownership of Improvements

Section 9.01 Subject to the provisions of the Markets Lease relating to the rights of the Markets Lessee and any Leasehold Mortgagee, and to Section 15.01 hereof, title to all Improvements constructed on the City Property by the Authority shall be and remain in the Authority until the expiration of the Term (unless this City Lease shall be sooner terminated as herein provided), and upon such expiration or sooner termination, title to such Improvements as are then remaining shall automatically pass to, vest in, and belong to the City without further action on the part of either party and without cost or charge to the City. The Authority and the City covenant that in order to confirm the automatic vesting of title as provided in this Section 9.01, each will execute and deliver such further assurances and instruments of assignment and conveyance as may be reasonably required by the other for that purpose.

ARTICLE X

Condemnation

Section 10.01 If there is a Taking which results in the termination of the Markets Lease, this City Lease shall, at the election of the Authority, terminate simultaneously therewith.

Section 10.02 The City agrees to recognize the rights of the Markets Lessor and the Markets Lessee to awards and payments for a Taking, in accordance with Article XII of the Markets Lease.

ARTICLE XI

Insurance, Restoration or Reconstruction of City Property

Section 11.01 During the Term, the Authority shall:

- (a) comply with all of the obligations of the Markets Lessor under Article XIII of the Markets Lease;
- (b) promptly and diligently pursue all of the rights and remedies available to it under Article XIII of the Markets Lease;
- (c) cause insurance to be maintained in accordance with the Markets Lease; and
- (d) cause the City Property to be restored and reconstructed in accordance with the Markets Lease.

ARTICLE XII

Default

Section 12.01 It shall constitute an "Event of Default" under this City Lease if the Authority at any time during the Term shall fail (i) to make payment of any installment of Rent; or (ii) to observe or perform any of the Authority's other covenants, agreements or obligations hereunder; and if any such default shall not be cured as to (i) within ten (10) days after receipt of written or telegraphic notice thereof by the Authority or as to (ii) within thirty (30) days after the City shall have given to the Authority written notice specifying such default (or, in the case of any default referred to in clause (ii) which cannot with diligence be cured within such thirty (30) day period, if the Authority shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default with diligence, it being intended, in connection with a default not susceptible of being cured with diligence within such thirty (30) day period, that the time of the Authority within which to cure the same shall be extended for such period as may be necessary to complete the curing the same with diligence).

Section 12.02 If any Event of Default shall have happened and be continuing, the City shall have the right, at its election, then or at any time thereafter while any such Event of Default shall continue, to give the Authority notice of the City's intention either (i) to terminate the Term of this City Lease or (ii) to reenter and take possession of the City Property on a date specified in such notice, which date shall not be less than ten (10) days after the date of giving of such notice, and on the date specified in any such notice, the Authority's right to possession of the City Property shall cease and the Authority shall peaceably and quietly yield to and surrender to the City the City Property, and if the City shall have given notice of its intention to terminate the Term of this City Lease, the Term of this City Lease shall thereupon be terminated.

In the event such notice is given, the City shall have the immediate right of reentry and possession of the City Property and the right (subject to the rights of the Markets Lessee and the Subtenants under Article XV hereof) to remove all persons and property therefrom. Should the City take possession pursuant to legal proceedings or pursuant to any notice provided for by law, the City may thereafter either terminate the Term of this City Lease or from time to time, without terminating the Term of this City Lease, relet the

Property or any part thereof for such term or terms and at such rental or rentals and upon such terms and conditions as Lessor may deem advisable, with the right to make alterations and repairs to the City Property.

Section 12.03 ' In the event of any termination of the Term of this City Lease as provided in Section 12.02 hereof or as otherwise permitted by law, the City may enter upon the City Property, and again have, repossess and enjoy the same as if this Lease had not been made (subject to the rights of the Markets Lessee and the Subtenants under Sections 15.03 and 15.05 hereof), and in any such event neither the Authority nor any person claiming through or under the Authority by virtue of any statute or of an order of any court shall be entitled to possession or to remain in possession of the City Property but shall forthwith quit and surrender the same, and the City shall be entitled to proceed with any rights or remedies available to it under law or equity.

Section 12.04 If the City shall reenter and obtain possession of the City Property by reason of or following any default of the Authority, whether or not the Term shall have terminated, the City shall have the right, without notice to repair or alter the City Property in such manner as the City may deem necessary or advisable so as to put the City Property in good order and to make the same rentable, considering the

use of the City Property immediately prior thereto, and shall have the right, at the City's option, to relet the City Property or any part thereof.

Section 12.05 No such reentry or taking of possession of the City Property by the City shall be construed as an election on the City's part to terminate the Term unless a written notice of such intention be given to the Authority or unless the termination hereof be decreed by a court of competent jurisdiction.

Section 12.06 No right or remedy herein conferred upon or reserved to the City or the Authority is intended to be exclusive of any other right or remedy, except as expressly stated herein, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter existing at law or in equity or by statute, except as such rights or remedies as expressly limited herein.

Section 12.07 If the City at any time during the Term shall fail to observe or perform any of the City's covenants, agreements or obligations hereunder, and if any such default shall not be cured, as to any default resulting from the nonpayment of money, within ten (10) days after receipt of written or telegraphic notice thereof by the Authority, or as to any other default, within thirty (30) days after the Authority shall have given to the City written notice specifying such default (or, in the case of any default not resulting from the nonpayment of money which cannot with diligence be

cured within such thirty (30) day period, if the City shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default with diligence, it being intended, in connection with a default not susceptible of being cured with diligence within such thirty (30) day period, that the time of the City within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with diligence), then the Authority shall have the right to elect and pursue any right or remedy available to it under law or equity.

Section 12.08 In the event performance of any of their respective covenants, agreements or obligations under this City Lease by the City or the Authority is prevented, interrupted or delayed by causes beyond the City's or the Authority's control, as the case may be, including but not restricted to strike, lockout, action of labor unions, riot, storm, flood, explosion, acts of God or of the public enemy, acts of government, acts of the other party prohibited by this City Lease, war invasion, insurrection, mob violence, sabotage, malicious mischief, inability (notwithstanding good faith and diligent efforts) to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, fires, epidemics, quarantine restrictions, freight embargoes, unusually severe weather, inability (notwithstanding good faith and diligent efforts) to obtain governmental permits or approvals, or delays of contractors or

subcontractors due to such causes, and not caused by any act or failure to act by the party thereby delayed in such performance, the date or time or times for the performance of such covenant, agreement or obligation by the City or the Authority shall be postponed by the period of time during which such performance* is so prevented, interrupted or delayed and, in such case, neither the City nor the Authority shall be liable for any costs, losses, damages, injuries or liabilities caused to or suffered or incurred by the City or the Authority in connection with, or as a result of, any such delay in, or nonperformance of, such covenant, agreement or obligation. In the event that either the City or the Authority intends to avail itself of the provisions of this Section 12.08, it shall give written notice of such intent to the other, such notice to be given not more than fifteen (15) days from the date performance of such covenant, agreement or obligations was so prevented, interrupted or delayed.

ARTICLE XIII

Notices and Demands

Section 13.01 All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms hereof, shall be in writing, and shall be deemed to have been properly given if sent by registered or certified United States Mail, postage prepaid,

* First Amendment to City Lease, Paragraph 2

return receipt requested, addressed, if intended for the City, to it at City Hall, Boston, Massachusetts, Attention of the Mayor, and if intended for Lessee to it at The Rouse Company Building, Columbia, Maryland 21044, Attention of the Secretary. The City or the Authority shall, at any time and from time to time, have the right to specify as its proper address for purposes of this City Lease any other address or addresses upon giving fifteen (15) days' written notice thereof to the other party.

ARTICLE XIV

Indemnification

Section 14.01 The Authority shall pay, and protect, indemnify and save harmless the City from and against any and all liabilities, losses, damages, costs, expenses (including all reasonable attorneys' fees and expenses of the Authority and of the City), causes of action, suits, claims, demands or judgments of any nature whatsoever (except those which result from the acts of the City) which may be imposed upon or incurred by or asserted against the City by reason of (i) any accident, injury to, or death of any person or any damage to property occurring on the City Property or any part thereof (except as may result from the acts of the City) or (ii) any use, non-use, condition, or occupation of the City Property or any part thereof or resulting from the condition thereof or of adjoining sidewalks, streets or ways, or (iii) any failure by the Authority to perform or comply with any of the terms

hereof or of any contracts, agreements or restrictions, statutes, laws, ordinances or regulations affecting the City Property or any part thereof or the ownership, occupancy or use thereof.

ARTICLE XV

Rights of Markets Lessee, Leasehold Mortgagees and Subtenants

Section 15.01 In the event of a termination of this City Lease, the City shall not disturb the possession of the Markets Lessee under the Markets Lease for so long as the Markets Lessee is not in default under the Markets Lease[. The rights of nondisturbance granted hereunder] and, provided the Markets Lessee shall assume and agree to perform all of the duties and obligations of the Markets Lessor under the Markets Lease. The rights of nondisturbance granted hereunder and the agreement of the City to assume such duties and obligations of the Markets Lessor* shall run to and benefit the Markets Lessee and its successors and assigns, including Leasehold Mortgagees.

Section 15.02 The City shall accept performance and compliance by the Markets Lessee and any Leasehold Mortgagee with any term, covenant, agreement, provision, condition or limitation on the Authority's part to be kept, observed or performed hereunder with the same force and effect as though kept, observed or performed by the Authority. In case of the

* First Amendment to City Lease, Paragraph 4

termination of this City Lease by reason of the happening of any Event of Default, the City shall give notice thereof to the Markets Lessee and any Leasehold Mortgagee which shall have notified the City of its name and address.

If an Event of Default under this City Lease results in a termination hereof and if within thirty (30) days after the mailing of notice to the Markets Lessee and Leasehold Mortgagee either the Markets Lessee or the Leasehold Mortgagee shall commence and be proceeding with due diligence to cure the default specified in the notice, then the City shall, upon the written request of the Markets Lessee or such Leasehold Mortgagee made at any time within said thirty (30) day period, mutually enter into a new lease of the City Property with the Markets Lessee or Leasehold Mortgagee for the remainder of the Term, and with priority equal hereto at the rent and upon the terms, covenants, agreements, provisions, conditions and limitations herein contained, modified, however, mutatis mutandis to reflect the changed circumstances.

Section 15.03 In the event of termination of this City Lease, the possession of Subtenants of the Markets Lessee shall not be disturbed for so long as said Subtenants are not in default under their respective leases. The right of nondisturbance granted hereunder shall run to and benefit such Subtenants and their respective successors and assigns.

Section 15.04 At the request of the City, the Markets Lessee, Leasehold Mortgagee and Subtenants shall attorn to the City and shall execute and deliver such instruments as the City shall reasonably request to confirm such attornment.

Section 15.05 At the request of the Markets Lessee or Leasehold Mortgagee, the City will execute and deliver a non-disturbance agreement incorporating the terms of Sections 15.01 and 15.02 hereof, and at the request of any Subtenant, the City will execute and deliver a nondisturbance agreement incorporating the terms of Section 15.03 hereof.

Section 15.06 Notwithstanding the provisions of Sections 15.03 and 15.05 hereof, the City shall not be required to recognize the nondisturbance rights of any Subtenant under a Sublease providing for a term of more than fifteen years, including extensions and renewals, unless such Sublease has been approved by the Corporation Counsel of the City; provided, however, any such Sublease submitted by the Authority or the Markets Lessee to the Corporation Counsel of the City for approval shall be deemed approved unless, within thirty days after such submission, the Corporation Counsel shall have given written notice to the party submitting such Sublease of the disapproval of such Sublease, which notice shall specify the reasons for such disapproval.

Section 15.07 The City shall send copies of any notice of default under this City Lease to the Markets Lessee at the

address for notices set forth in Article XVI of the Markets Lease and to any Leasehold Mortgagee, the name and address of which has been furnished to the City.

ARTICLE XVI

Termination of Markets Lease

Section 16.01 [In the event that the Markets Lease terminates prior to the expiration of the Term hereof, this City Lease shall terminate automatically on the date of termination of the Markets Lease.] In the event that the Markets Lease terminates prior to the expiration of the Term hereof and if no Leasehold Mortgagee shall exercise its option to require the Markets Lessor to enter into a new lease pursuant to Section 15.07 of the Markets Lease, then this City Lease shall terminate automatically on the last day on which any Leasehold Mortgagee shall be entitled to require the Markets Lessor to enter into such new lease.*

The City shall, upon the written request of the Authority made at any time within one hundred eighty (180) days of such termination, execute and deliver to the Authority within thirty (30) days thereafter a new lease of the City Property for the remainder of the Term, and with priority equal thereto at the rent and upon the terms, covenants, agreements, provisions, conditions and limitations herein contained, modified, however, mutatis mutandis to reflect the changed circumstances.

* First Amendment to City Lease, Paragraph 4

ARTICLE XVII

Miscellaneous

Section 17.01 No member, official, or employee of the City shall have any personal interest, direct or indirect, in this City Lease, nor shall any such member, official or employee of the City be personally liable to the Authority, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Authority or successor or on any obligations under the terms of this City Lease.

Section 17.02 The City and the Authority shall at any time and from time to time, within ten (10) days after written request by the other, execute, acknowledge and deliver to the party which has requested the same, to the Markets Lessee, to any prospective Leasehold Mortgagee under the Markets Lease or to any assignee or Subtenant, a certificate stating (i) that this City Lease is unmodified and in force and effect (or if there have been modifications, that this City Lease is in force and effect as modified, and identifying the modification, or if this City Lease is not in force and effect the certificate shall so state); (ii) the date to which rental has been paid under this City Lease; (iii) whether there is any existing default by the Authority in the payment of any rent or other sum of money under this City Lease and

whether there is any other existing default by either party under this City Lease with respect to which a notice of default has been served, and if there is any such default, specifying the nature and extent thereof; and (iv) whether there are any setoffs, defenses or counterclaims against enforcement of the obligations of the City hereunder. After issuance of any such certificate, the issuer shall be estopped from denying the veracity or accuracy of the same.

Section 17.03 The headings of the various Articles of this City Lease have been inserted for convenience and reference only and shall not in any manner be construed as modifying, amending or affecting in any way the express terms and provisions hereof.

Section 17.04 Except as herein otherwise provided, whenever in this City Lease the consent or approval of the City or the Authority is required, such consent or approval shall not be unreasonably withheld, and shall be in writing, signed by an officer or agent thereunto duly authorized, of the party granting such consent or giving such approval.

Section 17.05 This City Lease, and any modifications thereof or additions thereto, shall be duly recorded by the Authority among the land records of the Suffolk County Registry of Deeds, and the costs of such recordation and any and all Federal revenue stamps which legally must be attached to any of said papers shall be paid by the Authority.

Section 17.06 There shall be no merger of this City Lease or of the leasehold estate hereby created with the fee estate in the City Property or any part thereof by reason of the fact that the same person may acquire or hold, directly or indirectly, this City Lease or the leasehold estate hereby created or any interest in this City Lease or in such leasehold estate as well as the fee estate in the City Property or any interest in such fee estate.

Section 17.07 Upon the expiration or earlier termination of this City Lease, the Authority shall peaceably leave and surrender the City Property to the City in the same condition in which the City Property was originally received from the City at the commencement of this City Lease, except as repaired, rebuilt, restored, altered, or added to as permitted or required by any provision of this City Lease or the Markets Lease and except for ordinary wear and tear. The Authority shall remove from the City Property on or prior to such expiration or earlier termination all property situated thereon which is not owned by the City, and, at its expense, shall, on or prior to such expiration or earlier termination, repair any damage caused by such removal. The City Property not so removed shall become the property of the City, and the City may thereafter cause such property to be removed from the City Property and disposed of, but the cost of any such removal and disposition and the cost of repairing any damage caused by such removal shall be borne by the Authority.

Section 17.08 Each and every covenant and agreement contained in this City Lease is, and shall be construed to be, a separate and independent covenant and agreement, and the breach of any such covenant or agreement by the City shall not discharge or relieve the Authority from its obligations to perform the same. If any term or provision of this City Lease or the application thereof to any person or circumstances shall to any extent be invalid and unenforceable, the remainder of this City Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this City Lease shall be valid and shall be enforced to the extent permitted by law.

Section 17.09 All of the covenants, conditions and obligations contained in this City Lease shall be binding upon and inure to the benefit of the respective successors and assigns of the City and the Authority to the same extent as if each successor and assign were in each case named as a party to this City Lease. Any person, corporation or other legal entity acquiring any or all of the rights, title and interest of the Authority in and to the leasehold estate in the City Property shall thereby become liable under and be fully bound by all of the provisions of this City Lease.

Section 17.10 Nothing herein shall be deemed or construed by the parties hereto or by any third party as creating or authorizing the creation of any partnership or joint venture between the City and the Authority, it being understood and agreed that no provision of this City Lease, nor any act of the City or the Authority hereafter, shall be deemed to create any relationship between the City and the Authority other than the relationship of landlord and tenant.

Section 17.11 This Lease may not be modified except by a writing signed by the City and the Authority.

Section 17.12 This City Lease shall be governed by and construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts.

GUARANTY

The Rouse Company (hereinafter called "Rouse") as a joint and several obligor and not as a surety, hereby unconditionally guarantees the payment of all sums to be paid by Lessee under this Lease which become due or which become payable prior to the issuance of the Certificate of Final Completion, and the prompt performance by Lessee of all the terms, conditions, covenants and agreements of this Lease which are required to be performed or completed on or before the date of issuance of the Certificate of Final Completion.

Rouse promises to pay on demand all of Lessor's expenses, including court costs and reasonable attorney's fees, incurred by Lessor in enforcing the obligations of Lessee under this Lease or in enforcing this Guaranty. Any assignment or assignments and any subletting or sublettings by Lessee or Lessee's assigns or sublessees, of this Lease, made with or without notice to Lessee, or the Lessor's forbearance or delay in enforcing or exercising any claims, rights or remedies of any kind against Lessee, or any other reason, whether similar to or different from the foregoing, shall in no way affect, impair, discharge, or release, in whole or in part, Rouse from its liability as Guarantor. The obligation of Rouse under this Guaranty is a primary and unconditional obligation, and Lessor may at its option proceed

against Rouse in the first instance to collect any payment due under this Lease or enforce any of the terms, conditions, covenants or agreements of this Lease without first proceeding against Lessee or any other person, firm or corporation, and should Lessor so proceed, Rouse promises to pay on demand all of Lessor's expenses, including court costs and reasonable attorney's fees, as aforesaid.

The obligations, covenants, agreements and duties of Rouse under this Guaranty shall in no way be affected, impaired, discharged or released, in whole or in part, or the amount of recovery limited, by reason of the happening at any time of the voluntary or involuntary liquidation, dissolution, sale of all or substantially all of the assets, marshalling of assets and liabilities, receivership, conservatorship, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of Lessee or any other similar proceeding affecting Lessee, or the disaffirmance, rejection, rescission or avoidance of this Lease arising out of any such proceeding aforesaid, it being the purpose and intent of Rouse that this Guaranty and the obligations of the Guarantor hereunder shall be absolute and unconditional under any and all circumstances, and shall not be discharged except by payment and performance as herein provided, and then only to the extent of such payment or performance.

Rouse hereby waives notice of acceptance of this Guaranty and waives any notice of Lessee's nonpayment or nonperformance of any terms, conditions, covenants or agreements of this Lease.

Rouse acknowledges the provisions of Article XIV of this Lease and agrees not to make any Transfer other than as permitted by Article XIV.

Rouse hereby consents to jurisdiction of the courts of the Commonwealth of Massachusetts in actions in which Rouse may be a party and which are alleged to arise under this Guaranty, but not for any other purpose or any other transaction. Rouse appoints Phil David Fine, Esquire, of 1 State Street, Boston, Massachusetts (or such other person or persons residing or having a place of business in the Commonwealth of Massachusetts whom Rouse may designate from time to time by notice to Lessor given in accordance with the provisions of Article XVI of the Lease) as its agent and attorney upon whom service of process may be made in any action to which Rouse may be a party which is alleged to arise under this Guaranty, and service of process on said Phil David Fine, Esquire, (or such other designee of Rouse) shall be taken as personal service of process upon Rouse.

ATTEST:

THE ROUSE COMPANY

By _____

COMMONWEALTH OF MASSACHUSETTS

County of Suffolk

On this day of , 197 , before me appeared
Roy E. Williams, the Vice-President of The Rouse Company, who
being by me duly sworn, acknowledged the foregoing Guaranty to
be the free act and deed of said Corporation.

Notary Public

My commission expires:

B65R.I

c.1

WATERFRONT

BRA

Indenture of lease ...
between Boston Redevelop-
ment Authority & Faneuil
Hall Marketplace, Inc.

DATE

B65R.I

c.1

WATERFRONT

BOSTON PUBLIC LIBRARY



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